I. INTRODUCTION

The undersigned State Attorneys General (“State AGs”) submit these Reply Comments in response to the Public Notice issued by the Consumer and Governmental Affairs Bureau,1 seeking comment on the Federal Communication Commission’s (“Commission”) proposals to, inter alia, “ban the practice of obtaining a single consumer consent as grounds for delivering calls and text messages from multiple marketers on subjects beyond the scope of the original consent.”

Consistent with our respective and collective offices’ efforts in combatting illegal robocalls and text messages, and in response to those commenters advocating for measures that will provide lesser protection for consumers, the State AGs support the Commission’s intended goal of eliminating the current practices of the lead generation industry, unscrupulous voice service providers, and illegal robocallers that abuse the Commission’s rules governing prior express

---


2 March 2023 FNPRM at 22, ¶ 58.
written consent. In addition, the State AGs offer comments concerning the Commission’s proposals with respect to text messaging.

II. PRIOR EXPRESS WRITTEN CONSENT

A. The Lead Generation Problem

Telemarketers, voice service providers, and scammers need people to call (or text). Thus, lead generation has proliferated into a billion-dollar industry and has become a necessary component of the robocall ecosystem. Most obviously, there is the person or entity interested in placing calls to potentially solicit customers for any number of products or services or to swindle consumers into parting with their hard-earned money or personal information. Whether for telemarketing or for scams, the entity that wants to place the calls needs to select the phone numbers to call, needs technology to dial the calls en masse, and needs a voice service provider to connect the calls to the recipients. Each of these necessary functions is routinely outsourced to providers all over the globe, who facilitate and profit from facilitating robocalls.

A few months into the global COVID-19 pandemic, Assurance IQ, LLC (“Assurance”), an insurance company, filed a petition with the Commission seeking an expedited ruling regarding what constitutes prior express consent under the Telephone Consumer Protection Act (“TCPA”).

In its Petition, Assurance requested the Commission confirm that “where it is determined that a calling party has sufficient information to establish a reasonable basis to believe that they have

---

3 Lead generation involves collecting personal information, including telephone numbers, from consumers and then selling that information to third parties who want to use the leads to generate business. See also https://www.statista.com/statistics/190328/us-online-lead-generation-spending-forecast-2010-to-2015/ (Accessed April 18, 2023).

valid consent to make the call, the caller may rely on that consent for TCPA purposes until such
time as the called party claims to the caller that he or she did not provide the consent.”

In its Petition, Assurance outlined its process for obtaining prior express consent from consumers, as follows:

Consumers seeking quotes through one of [Assurance’s] web sites…are first required to answer questions to provide information relevant to the formulation of a needs assessment. This information includes the customer’s name, telephone number…address, and [originating IP-address]…At the final step, in order to receive an online quote, the consumer sees, immediately above the submit or “get my quote” button, the statement, “By Clicking View My Quote, I agree to the below consents.” Adjacent to that button, the consumer sees the following:

![By clicking 'View My Quote', I expressly consent by electronic signature to receive marketing communication, including via calls using an automatic telephone dialing system and artificial or pre-recorded messages, emails, and text messages (SMS), from insurance companies or their agents, the owner of this website and its agents, representatives and affiliates, and partner companies to the phone number provided (including any wireless numbers). I understand that my consent to receive communications in this manner is not required as a condition of purchasing any goods or services, my telephone company may impose charges for these contacts, and I can revoke my consent at any time. If you are Medicare-eligible a representative may call you about a Medicare Advantage plan, Medicare Prescription Drug plan, Medicare Supplement plan or other Medicare plans. Not affiliated with the United States Government or the federal Medicare program.

By clicking 'View My Quote', I further agree to receive SMS notifications from Assurance short code 71953. Message and data rates may apply. Message frequency varies. You may receive alerts until you choose to opt out of this service by texting “Stop” to 71953 or replying “Stop” to any of our messages. Text “Help” to 71953 for assistance. Terms and Conditions and Privacy Policy and Do Not Sell My Personal Information](image)
Typically, a consumer is not required to click on the “partner companies” hyperlink, nor the hyperlinks for the “Terms and Conditions” or “Privacy Policy,” in order to click on the “View My Quote” button. If a discerning consumer clicks on the link for “partner companies,” Assurance redirects the consumer to a separate webpage, wherein Assurance lists over 2,100 company names. By simply requesting an insurance quote from Assurance via a web inquiry, Assurance has opened the floodgates for an unwitting consumer to receive thousands upon thousands of robocalls, emails, or text messages from not only Assurance and “its agents, representatives and affiliates” (whoever they are), but “other insurance companies or their agents” (whoever they are), as well as the 2,100+ companies.

In reviewing the list of Assurance “partner companies,” it is readily apparent that not all of these companies sell insurance products. Without performing an exhaustive internet search of all 2,100+ names, it appears that the list of partner companies includes businesses that sell automobile warranties or service contracts, solar panels, digital advertising, and debt relief services, to name a few. Interestingly enough, the list also appears to include lead generation and marketing companies, as well as companies with wholly generic names, such as ‘American,’ ‘Builders,’ ‘Electric,’ ‘Erie,’ ‘Fabric,’ ‘Facility,’ ‘Federal,’ ‘Inc.,’ and ‘LLC,’ to name a few. One can only speculate as to why such a list would contain such generic names.

---


8 See State AG Reply Comment - Exhibit 1, attached.

9 See State of Ohio v. Aaron Michael Jones, et al., 2:22-cv-02700-ALM-KAJ (S.D.Oh. 2022), Complaint, 7/7/2022 at ¶ 69 (alleging that when a VoIP provider of an illegal robocaller had to respond to an ITG traceback request, the robocaller needed to “buy some time” before responding in order to add “auto services” language to the list of opt-in websites in the terms and conditions).
Assurance’s business practice is not an anomaly. Telemarketers (and some voice service providers\textsuperscript{10}) typically rely on the purported consent provided through data brokers, bots, or weblinks on websites. Various parties create marketing websites with consent forms and then sell the data (i.e., names and phone numbers) to intermediary ‘aggregators,’ who compile the lead data from multiple website publishers and then sell the data to other aggregators, and so on, until the telemarketers purchase the leads for solicitation purposes.\textsuperscript{11} Multiple filers submitted comments into the record in response to Assurance’s Petition, providing examples and greater explanation of these practices.\textsuperscript{12}

\textsuperscript{10} See Order, *In the Matter of Urth Access, LLC*, File No. EB-TCD-22-00034232, December 8, 2022, at 6-7, ¶¶ 15-16 (Urth Access, a voice service provider sanctioned by the Commission, claimed, in response to a Traceback, that its customers obtained consent for student loan robocalls. Urth Access provided the Traceback group with purported consent logs that included website addresses through which the illegal robocallers captured the called party’s consent. However, the Commission recognized that none of the websites had any connection to student loan assistance, but rather, concerned health insurance products/services. The Commission also recognized that the consent logs failed to provide adequate disclosure that would constitute valid consent, as required by the Commission’s rules. The websites included TCPA consent disclosures whereby the consumer agreed to receive robocalls from “marketing partners.” These marketing partners were only visible to the consumer if the consumer clicked on a specific hyperlink to a second website that contained the names of 5,329 entities.)

\textsuperscript{11} See generally “Follow the Lead” Workshop, Staff Perspective (Sept. 2016) at Staff Perspective: "Follow the Lead" workshop - September 2016 (ftc.gov).

\textsuperscript{12} See, e.g., Letter from Timothy J. Sostrin, Keogh Law, to Marlene Dortch, Federal Commc’ns Comm’n, CG Docket No. 02-278 (Aug. 12, 2020); Reply Comments of James Shelton in Opposition to Petition for Expedited Declaratory Ruling filed by Assurance IQ, LLC, CG Docket No. 02-278 (filed July 6, 2020); Reply Comments of Joe Shields on the Assurance IQ LLC Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed July 6, 2020); Comments of ZipDX LLC, CG Docket No. 02-278 (filed May 28, 2020); Letter from National Consumer Law Center, et al. to Marlene Dortch, Federal Commc’ns Comm’n, CG Docket No. 02-278 (Aug. 12, 2020); Letter from National Consumer Law Center, et al. to Marlene Dortch, Federal Commc’ns Comm’n (Oct. 4, 2022).
B. The Commission’s Proposed Solution and Requests for Comment

In the March 2023 FNPRM, the Commission proposes to amend 47 C.F.R. Section 64.1200(f)(9) by adding the below-emphasized language to the current rule:

The term prior express written consent means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

Prior express written consent for a call or text may be to a single entity, or to multiple entities logically and topically associated. If the prior express written consent is to multiple entities, the entire list of entities to which the consumer is giving consent must be clearly and conspicuously displayed to the consumer at the time consent is requested. To be clearly and conspicuously displayed, the list must, at a minimum, be displayed on the same web page where the consumer gives consent.13

In addition to comments on the proposed language set forth above, and whether or not it will “clarify consent” or “help to eliminate illegal text messages and calls,” the Commission seeks comment on alternatives to the proposed language that would better protect consumers from the harms of illegal robocalls or text messages.14 The Commission also seeks comment on the principle that prior express consent to receive robocalls or text messages must be made directly to one entity at a time.15

The Commission additionally asks a series of questions regarding how its proposed new language would affect consumer use of comparison-shopping websites. First, it requests comments on how it can ensure consumers “can consent to obtain further information from the

13 March 2023 FNPRM at 34, Appendix C; compare 47 CFR § 64.1200(f)(9).
14 March 2023 FNPRM at 23, ¶¶ 61 and 62.
15 Id. at 23, ¶ 61.
site without receiving numerous calls and texts from unrelated companies.” Second, it requests that commenters discuss whether the new language would limit the value of comparison-shopping sites to consumers. Third, the Commission asks whether alternatives to the proposal exist that would better protect consumers from unwanted robocalls and texts that may result from use of comparison-shopping websites.\textsuperscript{16}

The undersigned State AGs support the Commission’s consistent and long history of requiring that prior express written consent for telemarketing be directly between a specific consumer and one specific seller. Based upon our understanding of the TCPA, the Code of Federal Regulations (“Code”), and the Commission’s previous orders, there is no “lead generator loophole.” Rather, those who profit from the robocall ecosystem are ignoring established law.

As such, the State AGs respectfully suggest that in lieu of amending the current language of Section 64.1200(f)(9) as proposed, the Commission instead clarify that the existing requirements for prior express written consent to receive robocalls and texts are in line with the principle that such consent must be made directly to one entity at a time. By doing so, the Commission will better protect consumers and avoid likely disputes over interpretation of the term “logically and topically associated.”

The State AGs also believe that contrary to the opening comments offered by members of the telemarketing industry, the Commission’s proposed new language permitting consumer consent to apply to more than one seller at a time is not necessary for consumers to continue to enjoy the benefits of comparison-shopping websites. Rather, as addressed in Section C (iii) below, within the structure of the current rule, these websites can make slight shifts to how information is

\textsuperscript{16} \textit{Id.}
displayed in a way that continues to provide consumers the benefit of comparison, without subjecting them to unwanted robocalls and texts.

C. Discussion

(i) The Current Rules Require Consent to One Seller at a Time

In 1991, Congress passed the TCPA to address consumer outrage “over the proliferation of intrusive, nuisance calls to their homes from telemarketers.”\(^\text{17}\) The TCPA provides that it is unlawful to make certain calls and texts\(^\text{18}\) using an automatic telephone dialing system\(^\text{19}\) or an artificial or prerecorded voice.\(^\text{20}\) In addition, the TCPA vests the Commission with authority to promulgate rules to implement this prohibition.\(^\text{21}\) Pursuant to this authority, the Commission determined that autodialed, prerecorded, or artificially voiced calls that introduce an advertisement or constitute telemarketing are illegal unless the called party has given “prior express written consent” to be called.\(^\text{22}\)

The Code provides that the called party must provide permission to the seller. The Code defines “Seller” as “the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or

---

\(^{17}\) Public Law 102-243, 105 Stat 2394 (Dec. 20, 1991) at Section 2 (6).

\(^{18}\) In 2003, the Commission clarified that “calls” include text messages to wireless numbers. 2003 TCPA Order, 18 FCC Record at 14115, para. 165.

\(^{19}\) In Facebook v. Duguid, 141 S.Ct. 1163, 1171 (2021), the Supreme Court clarified that “a necessary feature of an autodialer under § 227(a)(1)(A) is the capacity to use a random or sequential number generator to either store or produce phone numbers to be called.”

\(^{20}\) See 47 U.S.C. § 227(b)(1)(A) and (B).

\(^{21}\) 47 U.S.C. 227(b)(2).

\(^{22}\) 47 C.F.R. 64.1200(a)(2).
services, which is transmitted to any person.”

Furthermore, the Code defines “prior express written consent,” in relevant part, as “an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using…an artificial or prerecorded voice…” Hence, for advertising and telemarketing robocalls, the Code establishes that there must be express written consent by the called party to the seller.

Next, the Code delineates the requirements for the written agreement as follows:

(i) The written agreement shall include a clear and conspicuous disclosure informing the person signing that:

   (A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice …

Courts interpret “clear and conspicuous” to mean a notice that would be apparent to the reasonable consumer, separate from advertising copy or other disclosures.

The plain language of the existing rules makes clear that the Commission already intended for consent under the TCPA to be directly between a specific consumer and a specific seller. The Commission’s orders adopting these rules confirm this interpretation. For example, in 1995, in one of the first Commission orders implementing the TCPA, the Commission observed that

---

23 47 C.F.R. §64.1200(f)(10).

24 47 C.F.R. § 64.1200(f)(9) (emphasis added).

25 Id. (emphasis added).

although the statute does not define “express permission” or “invitation” from a consumer to permit telemarketing calls, Congress did not intend to allow telephone solicitation calls unless the called party (a) clearly stated that the telemarketer may call, and (b) clearly expressed an understanding that the telemarketer’s subsequent calls will be made for the purpose of encouraging the purchase of goods or services.27

Also, in its 2012 TCPA Order,28 the Commission declared it would “maximize consistency with the Federal Trade Commission’s (“FTC”) analogous Telemarketing Sales Rule (“TSR”)”29 by adopting its current rules on consent:

Consistent with the FTC’s TSR, [the Commission concludes] that a consumer’s written consent to receive telemarketing robocalls must be signed and sufficient to show that the consumer: (1) received ‘clear and conspicuous disclosure’ of the consequences of providing the requested consent, i.e., that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates.30

---


29 2012 TCPA Order, at 1831, ¶ 1.

30 Id. at 1844, ¶ 33 (emphasis added).
The TSR also requires the seller to obtain prior express consent from the called party.\textsuperscript{31} When the FTC amended the TSR in 2008 to prohibit telemarketing calls delivering prerecorded messages without a consumer’s express written agreement to receive such calls, the FTC responded to consumer comments expressing concern for their contact information being shared with affiliates or other companies. The FTC unequivocally stated that a “consumer’s agreement with a seller to receive calls delivering prerecorded messages is non-transferrable. Any party other than that particular seller must negotiate its own agreement with the consumer to accept calls delivering prerecorded messages. Prerecorded calls placed to a consumer on the [National DNC Registry] by some third party that does not have its own agreement with the consumer would violate the TSR.”\textsuperscript{32} Like the amended TSR, the TCPA and the Code allow sellers and telemarketers to call any person whose number has been entered on the National DNC Registry if that person has given his or her “prior express invitation or permission” to call, in writing and signed.\textsuperscript{33} Consequently, the so-called “loophole” is just a figment of the lead generation industry’s

\textsuperscript{31} See 16 C.F.R. § 310.4(b)(1)(v)(A) (in order to initiate any outbound telephone calls that deliver prerecorded messages to induce the purchase of goods or services, the seller must obtain an express, written agreement from the called party).

\textsuperscript{32} See Federal Register, Vol. 73, No. 169, August 29, 2008, at 51182 (emphasis added); https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#prerecordedmessages. (“Does a consumer’s written agreement to receive prerecorded message calls from a seller permit others, such as the seller’s affiliates or marketing partners, to place such calls? No. The TSR requires that the written agreement identify the single “specific seller” authorized to deliver prerecorded messages. The authorization does not extend to other sellers, such as affiliates, marketing partners, or others. May a seller obtain a consumer’s written permission to receive prerecorded messages from a third-party, such as a lead generator? No. The TSR requires the seller to obtain permission directly from the recipient of the call. The seller cannot rely on third parties to obtain permission.”)

\textsuperscript{33} 47 CFR 1200(c)(2)(ii) (emphasis added); see also, Report to Congress Pursuant to the Do No Call Implementation Act on Regulatory Coordination in Federal Telemarketing Laws Submitted by The Federal Trade Commission at 19 (“Like the amended TSR, the revised TCPA Regulations allow sellers and telemarketers to call any person whose number has been entered on the National Do Not Call Registry if that person has given his or her ‘prior express invitation or permission’ to call, in writing and signed.”).
collective imagination. The State AGs respectfully submit that consent under the TCPA is between one specific consumer and one specific seller.

In 2015, the Commission further put the consumer in command by clarifying that “a called party may revoke consent at any time and through any reasonable means. A caller may not limit the manner in which revocation may occur.”\textsuperscript{34} To allow third parties to gather consent would effectively limit the manner in which consumers who seek to revoke consent can do so. Consumers would be forced to first receive robocalls from a seller and then revoke consent individually to each seller. Third-party lead generators that gather consent for multiple sellers do not generally maintain a relationship with the sellers past the sale of consumer consent data, and thus, they cannot reliably transmit a revocation of consent from a consumer.

As a result, if a consumer initially consents to receive robocalls through a third-party lead generator, or if fabricated consent is fraudulently provided to a third-party lead generator, then the consumer cannot subsequently revoke consent through the lead generator and is likely to receive an ongoing barrage of robocalls from sellers who purchase the consumer’s information. Consumers who, for example, wish to receive information on mortgage rates do not need or desire mortgage related solicitations in perpetuity. Rather, in most instances, the consumer will either refinance or purchase a home, or they will change their mind after some time and no longer wish to receive solicitations.

However, when third-party lead generators collect and sell a consumer’s consent, the consumer cannot effectively revoke consent after the consumer’s need for mortgage information has passed. Rather, each time the lead generator sells the consumer’s information, and a seller

calls, the consumer must answer the unwanted robocall and revoke consent to the individual seller. This is another important reason why the Commission’s rules should not be amended to permit web-based consent from one consumer to apply to multiple sellers, even sellers of logically or topically related services.

The March 2023 FNPRM suggests a clear line in the sand in its proposal to “ban the practice of obtaining a single consumer consent as grounds for delivering calls and text messages from multiple marketers on subjects beyond the scope of the original consent.” However, the State AGs respectfully submit that the Commission’s proposed solution will not achieve this result. Under the Commission’s proposed amendments, multiple entities would be legally permitted to rely on the consent provided to another, totally separate entity. Instead of hyperlinks to separate websites, it is likely that hundreds, if not thousands, of so-called ‘marketing partner’ names will be crammed onto consent pages. Sellers, telemarketers, and voice service providers will most likely declare such practice is ‘clear and conspicuous’ because all the consumer has to do to see the fine print is to click on the magnifying glass icon to increase the size of the font on the computer screen.

In summary, the proposed amendment in Appendix C of the March 2023 FNPRM will not achieve the intended purpose, but it will open doors to new tricks and gimmicks. Instead, the Commission should simply clarify and reiterate that consent under the TCPA is between one specific consumer and one specific seller. If another seller wants consent to send robocalls to that consumer, then that other seller should independently obtain consent—no more hyperlinks, no more ‘marketing partners,’ and no more confusion.
(ii) **The Commission Should Confirm Compliance with the Federal E-Sign Act**

The Code also requires the written consent for telemarketing to comply with the federal Electronic Signatures in Global and National Commerce Act (“E-Sign Act”). The Code states that the called party’s “signature shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.” The E-Sign Act enables the validity and enforceability of electronic signatures. Pursuant to the E-Sign Act, an “electronic signature means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”

Hence, basic E-Sign law requires that for every agreement made electronically, there be four separate elements to constitute consent: (1) an electronic sound or process, such as the click of a mouse; (2) that is attached to or logically associated with a contract or agreement; (3) executed or adopted by the person; (4) with the intent to sign the agreement. Simply put, one cannot intend to sign an agreement when one does not know what the agreement is. Consequently, extending permission for telemarketing to entities and for services that are not specifically identified on the webpage where the consumer clicks to give permission to a specific seller does not provide the requisite intent.

In the Commission’s 2012 TCPA Order, the Commission concluded that “consent obtained in compliance with the E-Sign Act will satisfy the requirements of its revised rule, including permission obtained via an email, website form, text message, telephone keypress, or voice

---


36 47 C.F.R. § 64.1200(f)(9)(ii).

The Commission further concluded that “[a]llowing documentation of written consent under the E-Sign Act [would] minimize the costs and burdens of acquiring prior express written consent for autodialed or prerecorded telemarketing calls while protecting the privacy interests of consumers.”

In addition to restricting prior written consent for telemarketing to one specific seller, current Commission rules require the consent to be in writing and comply with federal E-Sign Act requirements. Accordingly, the undersigned State AGs request that the Commission reiterate that practices such as those employed by Assurance, as described above, violate Commission rules. Claims by “marketing partners” (listed on a separate webpage or website) that a consumer’s mouse click provided valid written consent for telemarketing are invalid. Moreover, because the E-Sign Act requires that the agreement be presented in writing, there is no authority for concocting oral consent during a robocall.

(iii) Reaffirming that the Current Rule Already Requires One Consent to One Seller at a Time Will Not Limit the Value of Comparison-Shopping Sites to Consumers.

As mentioned above, the Commission also requested the following input concerning its proposed modification of its rule regarding preexisting consumer consent to telemarketing calls and texts to allow one consent to apply to multiple sellers:

Consumers may find comparison shopping websites helpful; how can we ensure that they can consent to obtain further information from the site without receiving numerous calls and texts from unrelated companies? Commenters should discuss whether our

---


proposal would limit the value of comparison-shopping sites to consumers.\textsuperscript{42}

In the opening comment period, several commenters that support or operate comparison-shopping websites supported modifying the rule to expand consent to multiple sellers, arguing that requiring one consent per consumer would reduce access to and increase the cost of credit, deprive consumers of choice, and stifle competition.\textsuperscript{43} For example, Lending Tree represents:

[The] proposal will harm consumers, consumer welfare, and the competition that comparison-shopping websites promote among multiple providers and sellers. Such a limitation undermines the very reason that a consumer seeks out and visits a comparison-shopping website, which is to obtain simultaneous offers from multiple, competing sellers and providers, rather than having to shop from seller to seller on their own.\textsuperscript{44}

Similarly, Drips, which describes itself as a “conversational outreach platform that helps compliant businesses set appointments with consumers who have existing business relationships or provided written consent to be contacted for specific purposes,”\textsuperscript{45} claims:

Suggesting that consent should only be able to be made in a 1:1 fashion is an oversimplification to a nuanced problem. This would effectively kill all comparison-shopping websites, consumer choice, and online marketplaces as we know it.\textsuperscript{46}

\textsuperscript{42} March 2023 FNPRM at 23, ¶61.

\textsuperscript{43} See e.g., Comments of Lending Tree, LLC, CG Docket No. 02-278 (May 8, 2023) (“Lending Tree Comments”); Letter from Drips, CG Docket No. 02-278 (May 8, 2023) (“Drips Letter”); Letter from Online Lenders Alliance, CG Docket No. 02-278 (May 8, 2023).

\textsuperscript{44} Lending Tree Comments at 12.

\textsuperscript{45} Drips Letter at 1.

\textsuperscript{46} Id. at 3.
The State AGs disagree that enforcing the existing rule would harm consumer welfare and “effectively kill all comparison-shopping websites.” Comparison-shopping websites such as Lending Tree provide a service to consumers by gathering potential credit options in one place, but they do not perform a hard credit pull and do not provide firm offers of credit. As a result, consent is not necessary for their services to be offered and any related benefit to be rendered. Rather, consumers could use these services and then select the lender or lenders they wish to hear from individually. It is not necessary that a consumer be required to agree to receive robocalls or robotexts from multiple, potentially hundreds of other lenders in order for them to access the services of comparison-shopping websites.

Indeed, it is permissible under the current rules for a comparison-shopping site to collect express consent from individual sellers for telemarketing calls or texts on their websites. The website simply must clearly and conspicuously disclose the names of the sellers that may contact the consumer and ask the consumer to consent specifically to each seller from which they agree to receive calls or texts. The current rule does not prevent sellers from obtaining express consent. Therefore, the current rule does not undercut the business model insofar as that model relies on sellers obtaining specific consent from a consumer on a one-by-one basis.

In short, enforcing the rules to require pre-existing written consent to call or text a consumer for purposes of telemarketing from one consumer to one seller at a time will not reduce consumer access to credit, deprive consumers of choice, or stifle competition in the comparison-shopping industry. Rather, enforcing the current rule better protects consumers by requiring that they proactively consent to receiving further information from other companies. The State AGs therefore ask the Commission to reject commenter claims that enforcing the current rule would impair the value of comparison-shopping sites to consumers.
III. TEXT MESSAGES

A. The Illegal Text Problem

With the advent of mobile phones, the speed and the ease with which we communicate with others has increased exponentially. This increased speed creates circumstances that make consumers more vulnerable to robotext fraud. Consumers rely upon their mobile phones to receive communications that are characteristically short, but often important. As such, it is easier for bad actors to disguise their identities through a text message, in comparison to an illegal robocall or phishing e-mail. During a phone call or while reading an e-mail, the would-be victim has additional time to identify the scam, whereas this is not so with a short text message containing a malicious link. Simply by tapping (inadvertently or purposefully) the link in a text, consumers may expose their phones to malware and viruses. Given the amount of personal information contained on our cellular phones, the potential financial and personal privacy harms are vast.

The evidence already before the Commission supports a need to enact effective rules to address the continuing threat scam robotexts pose to consumers. As the Commission recognized, the number of spam text messages that wireless providers blocked grew ten times, from an estimated 1.4 billion in 2015 to 14 billion in 2020.\(^47\) In addition, consumers have reported $231 million in losses from text message scams in the first three quarters of 2022, which is greater than the losses reported in 2020 and 2021 combined.\(^48\)

\(^{47}\) March 2023 FNPRM at 3, ¶ 6.

\(^{48}\) Id. at 4, ¶ 6.
To curb the onslaught of illegal robotexts, the Commission seeks comment on whether it should adopt processes similar to those in place for illegal robocalls. Specifically, the Commission proposes, *inter alia*, to require terminating providers to block texts from a sender after the providers are on notice from the Commission that the sender is sending illegal texts, and to extend the National Do-Not-Call (“DNC”) Registry’s protections to text messages.\(^{49}\) The State AGs commend the Commission’s attention to the particular issue of illegal robotexts, distinct from the issue of illegal robocalls, and support the Commission’s efforts to review, clarify, and refine rules that aim to enhance protections for consumers and honor their requests not to be bombarded by illegal robotexts.

**B. Blocking Texts upon Commission Notification**

In the March 2023 FNPRM, the Commission proposes to “require terminating mobile wireless providers to investigate and potentially block texts from a sender after they are on notice from the Commission that the sender is transmitting suspected illegal texts, similar to [the Commission’s] requirement for gateway providers with respect to voice calls.”\(^{50}\) Based on the Commission’s proposal, the State AGs presume that the Commission’s Enforcement Bureau would issue an official notice of suspected illegal texts to a terminating mobile wireless provider (“terminating provider”).\(^{51}\) The terminating provider would then promptly investigate the identified text(s) and either block the texts and substantially similar texts on an ongoing basis or

\(^{49}\) *Id.* at 3, ¶ 4.

\(^{50}\) *Id.* at 20, ¶ 50.

\(^{51}\) *Id.* at 20, ¶ 52.
respond to the Commission that the terminating provider has a reasonable basis for concluding that the identified texts are not illegal.\textsuperscript{52}

To begin, the State AGs support the principle that all entities in the wireless messaging ecosystem have an obligation to do their part to preserve the trust in, and utility of, messaging services.\textsuperscript{53} This includes those providers who ultimately deliver illegal texts to consumers. However, because State AGs, along with the Commission, also understand that the messaging and voice ecosystems each have significantly different infrastructures,\textsuperscript{54} we are mindful that comparable success in mitigating illegal robotexts may not precisely align with the playbook that has been so effectively devised and refined by the Commission to mitigate illegal robocalls.

Therefore, to the extent that the Commission has determined that extending the robocall blocking protocols to robotexts will actually bring a measurable benefit to consumers across the country in preventing fraud, the State AGs support such a proposal. The State AGs further urge the Commission to continue exploring ways in which rules specific to the unique infrastructure, players, and technology of messaging and robotexting can be proposed and deployed to effectively and efficiently mitigate the continuing, burgeoning threat targeting our consumers.

\textsuperscript{52} Id.

\textsuperscript{53} See CTIA, \textit{Messaging Principles and Best Practices}, https://www.ctia.org/the-wireless-industry/industry-commitments/messaging-interoperability-sms-mms (last visited May 2, 2023) (enumerating a set of voluntary best practices developed in July 2019 by CTIA, the messaging industry association, and its member companies throughout the wireless messaging ecosystem).

\textsuperscript{54} Reply Comments of Fifty-One (51) State Attorneys General, Targeting and Eliminating Unlawful Text Messages at 4, CG Docket No. 21-402 (Dec. 9, 2022).
C. Clarifying Do-Not-Call Protections for Text Messages

To the extent that it may be unclear, the Commission proposes to “clarify that the National DNC Registry protections apply to text messages as well as voice calls and to codify this clarification in [the Commission’s] rules.”55 Previously, the Commission has stated that “text messages” are “calls” for TCPA purposes and has taken the position that the National DNC Registry protects consumers from unwanted marketing text messages.56 However, the Commission has not explicitly included text messages in the codified DNC rules.57

As the Commission recognized, the National DNC Registry has been operational for almost twenty years and currently protects over 246 million telephone numbers from telemarketing sales calls.58 As with our respective state DNC registries, the National DNC Registry is popular among consumers, as it provides a means through which consumers can exercise a modicum of control over the marketing telecommunications they choose to receive.

The State AGs support the Commission’s proposal to clarify that the National DNC Registry protections will apply to marketing text messages. Such clarification is a common-sense approach to eliminate any potential confusion in the industry and has the added benefit of providing protection to consumers regardless of whether the texting party utilizes an autodialer.59

---

55 March 2023 FNPRM at 21, ¶ 55.
56 Id.
57 Id.
58 Id.
59 Id. at 22, ¶ 57.
IV. CONCLUSION

The undersigned State AGs thank the Commission for the opportunity to present these comments in this proceeding and reaffirm our commitment to work with the Commission in combatting illegal robocalls and text messages. We respectfully urge the Commission to take this opportunity to shut down these unreliable and illegal methods of purportedly obtaining consent from consumers for marketing robocalls and texts. To that end, the State AGs recommend the Commission issue an Order that clarifies and confirms that its existing rules concerning “prior express written consent” contemplate consent between a specific consumer and one specific seller. This measure, as well as the other recommended measures set forth above, will ultimately better protect consumers from unwanted robocalls and text messages, which is a goal that the Commission and the State AGs collectively share.

BY 28 STATE ATTORNEYS GENERAL:

STEVE MARSHALL
Attorney General of Alabama

TREG TAYLOR
Attorney General of Alaska

KRISTIN K. MAYES
Attorney General of Arizona

ROB BONTA
Attorney General of California
JASON MIYARES  
Attorney General of Virginia

BOB FERGUSON  
Attorney General of Washington

Joshua L. Kaul  
Attorney General of Wisconsin

Bridget Hill  
Attorney General of Wyoming
State AG Reply Comment – Exhibit 1

1st Century
21st Century
21st Century Insurance
2insure-lessly
5 Star Auto Protection
7Made Media
AAA Auto Warranty
AAA Insurance Co.
AA Auto Protect
AABCO
AA Media Inc
AARP
ABCLeads
A&B Insurance and Financial
Abrazo Health
Absolute Health Agents
ACA Express
Acceptance
Acceptance Insurance
Access Insurance
AccordantMedia
Accessquote
ACE Global Marketing LLC
ACE Solutions
Acme
Acordia
Acquisition Tech
Acquisition Technologies
ACSC
Adexec Services
Admaric Insurance Agency
AdMediary
Admiral Life
AdoptAContractor
Adrea Rubin
Adrian Adams Agency
Adsparkx Digital
ADT
ADT Solar
Advance Consultants LLC
Advanced Vehicle Protection Center
Advantra
Advocate Health
Advocator Group
Aegis First
Aegis Security
Aegon US Holding Corp.
Aetna
A & E Vehicle Services
Affinity Health Plan
Affirmative
Affordable Healthcare Partners
Affordable Health Insurance Group
Affordable Insurance Group Inc.
Affordable Senior Health Solutions
AFLAC
AGA
Agency Incline
AgentCubed Marketplace
Agent Insider
Agent Marketing Partners
Agentra Healthcare
AHCP
AHH
AHIA
AHIX

AIB
AIG
AIG Direct
AIO
AIP
AIS
AIU
AIU Insurance
Alfa Insurance
Alfonzo Insurance Allstate Agency
Aliera Healthcare
All Access Health Insurance
All American Health Agency
Allcare United
Allcare United LLC
AllDigitalPromotions
All Digital Promotions
Alliagent Group
Alliance
Alliance 321
Alliance and Associates
Alliance & Associates
Alliance Insurance
Alliance National Health
Allianz
Allied
Allied Health
Allied Health Insurance Associates
Allied Health Insurance Associates LLC
Allied Insurance
Allied Insurance Partners
Allina Health
All Nation
All Risk
Allstate
Allstate County Mutual
Allstate Indemnity
Allstate Insurance
AllWebLeads
All Web Leads
Alpha Benefits Center
Alphatech Resource Holdings s.r.o
Alpine Digital Group, Inc.
America Auto Care
America Direct
American
American Adventure Insurance
American Alliance
American Automobile Insurance
American Automotive Alliance, LLC
American Banks
American Benefits
American Benefits Group
American Casualty
American Commerce Insurance Company
American Continental
American Deposit Insurance
American Direct Business Insurance
American Economy
American Empire Insurance
American Family
American Family Insurance
American Family Mutual
American Fidelity Corp.
American Financial
American General
American Health & Life Associates
American Health Marketplace
American Health Plans
American Health Reform Solutions
American Health Solutions
American Health Underwriters
American Home Assurance
American Income Life
American Income Life Insurance Company
American Income Life Insurance Company Family
American Insurance
American Insurance Agencies
American Insurance Agencies Direct
American Insurance Agencies Direct Inc.
American Insurance Company
American Insurance Organization
American Insurance Organization, LLC
American International
American International Ins
American International Pacific
American International South
American Life & Health
American Manufacturers
American Mayflower Insurance
American Motorists Insurance
American National
American National Insurance
American National Insurance Co
American National Property and Casualty
American Premier
American Premier Insurance
American Protection Insurance
American Reliable
American Republic
American Republic Insurance Co.
American Savers Plan
American Security Insurance Company
American Select
American Select Health
American Senior Med
American Service Insurance Agency
American Skyline Insurance Company
American Spirit Insurance
American Standard
American Standard Insurance - OH
American Standard Insurance - WI
American States
American Workers Insurance Services
Americare
Americare/American Enterprise
Americare Group
America's Health Advisors
Americas Health Brokers
America's Health Care Plan
Americas Health Group
America's Insurance
America's Moneyline, Inc.
America's Trust
America's Trust, Inc.
AmeriChoice
Americo
Amerigroup
AmeriHealth
AmeriLife
AmeriLife Group, LLC
AmeriLife Marketing Group, LLC
AmeriPlan
Ameriprise
Ameriprise Financial Group
Ameriquote
AmeriSave
Amerisure
Amica
Amica Insurance
Amica
Angel Marketing Group
Angel Marketing Group, LLC
Anhelo Insurance Solutions LLC
Anhelo Insurance Solutions LLC.
ANPAC
Answer Financial
Anthem
Anthem
Anthem / BCBS
AON
Aon Corp.
APEX Health Plans
API
Apliant
Apollo Insurance Group
Apollo Interactive
Applied General
Aragon Advertising
Aragon Advertising LLC
Arbella
Ardent Health Services
Arizona General
ARMED Forces Insurance
Arrowhead
Arrowstar Insurance Center
Art Institute
Assigned Risk
Associated Indemnity
Associated Insurance Managers
Assurance IQ, Inc.
Assurant
Assured Benefits Direct
Assured Health Group LLC
Assured Life
Assure Media
Astonish
Astoria Company
Atlanta Casualty
Atlanta Specialty
Atlantic Auto Protection
Atlantic Blue Media
Atlantic Health
Atlantic Health Advisors
Atlantic Indemnity
Atlantis
Atlantis Health Group
Atomic Leads
Atreus Medicare Group
Austin Mutual
AutoCarenow.com
Auto Club Insurance Company
Auto Insurance Guide
Automobile Association of America
Automobile Club of Southern California
Auto Owners
Auto Protection 1
Auto Protection Club
Auto Repair Network
Auto Repair Protection Services
Auto Service Center
Auto Warranty Savings Center
Avendia
Avendia Management
Avenge Digital
Aviva
Avmed
AvMed Inc.
Avomark
AXA
AXA Advisors
AXA Capital
AXA Insurance Group
Badger Mutual
Balanced Life Agency
Banker’s Fidelity
Bankers Hill Insurance
Bankers Life and Casualty
Bankers & Shippers
Bankrate
Bankrate, Inc.
Bankrate Insurance
Banner Life
Bantam Connect
Bartleson Brokers
Bayside
BBRS Group
BCBS
BCBS of Alabama
BCBS of Florida
BCBS of Michigan
BC Group LLC
BE Marketing Solutions Inc.
Benefit Advisors
Benefit Mall
Benefit United LLC
Benepath
Bennett FMO
Bennett Insurance Agency
Best Agency USA
Best Health Options
Best Insurance Group
Bestow
Better Health Alternatives
Better Living Health Services
Better Mortgage Corporation
Beyond Finance, DBA Accredited Debt Relief
BH Insurance Solutions, LLC
Bianco
Black Optek
Blueberry
Blue Choice
Blue Cross
Blue Cross - Anthem
Blue Cross Blue Shield
Blue Cross/Blue Shield Association Companies
Blue Cross of South Carolina
Blue Ink Digital
Bluensure Insurance
Blue Nsure Insurance
Blue Shield of California
Blue Summit
Blue Summit Insurance Solutions
Blue Wing Ads
BMP Insurance
Bold Media Group
Bolt
Bonneville
Boost
Boost Health
Boost Health Insurance
Boston Old Colony
Bravo Health
BridgeNet
BridgeNet Insurance
Bright Health Plan
Bright Health Solutions
Bright Idea Insurance Solutions, Inc.
Brightway
Bristolwest
Bristol West
Brokers Alliance
Brooke Franchise Corporation
Brooke Insurance
Brookstone Financial
BRXTN Digital Media
Budget Family Insurance
Builders
Burial Expense
Clastier
Cal Farm Insurance
Caliber Health Solutions
Caliber Home Loans
Caliber Home Loans, Inc.
California Casualty
California State Automobile Association
Call4SeniorSavings.com
Call Blade
CallCore
CallCore Media
Call Lead Solutions
Call Trader
Call Trader LLC
Campbell
Camden
CAN
CancerInsurance.com
Candid Maven
Capital Auto Protection
Capital Choice
Capital District Physicians Health Plan
Capital Health Advisors Inc.
Capital Health Insurance of America
Carchex
Cardinal Financial Company, Limited Partnership
Care Entrée
CareMore
Caresource
CareZone
Carezone Inc.
CareZone Insurance Services
CarGuard Administration
Carle Clinic Association
Carriers and partner companies include
CarShield
Cascade National Ins
Casualty Assurance
Catholic Financial Life
CDPHP
CDX Consultants
CEGE
Cege Media
Celtic Insurance
Centene
Centene Corp.
Centennial
Central Bank
Century Benefits
Century Insurance
Certainty Auto Protection
Channel Blend
Charter Oak
Chase Insurance Group
Cherry Blitz
Chesapeake
Chicago Insurance
Choice Direct
Choice Health
Choice Insurance
Choice One Health
Choice One Health & Life Agency
Choice Right LLC
Christian Fidelity
Chubb
Church Mutual
Cigna
CIQ
Citation Insurance Company
Citigroup
Citizens
Citizens Disability
Clarendon American Insurance
Clarendon National Insurance
Clean Energy Concepts
Clear Choice Health
Clearcover
ClearLink
Clear One
Click 2 Call Network
Clicks and Clients
Client Consent Medicare
Cloverleaf
CMG Solutions
CNA Insurance
Coastline Insurance Advisors LLC
CO Farm Bureau
Colby Direct
Colonial
Colonial Insurance
Colonial Penn
Combined
Comfortcare Insurance Group
Comfort Care Insurance Group
ComfortCare Insurance Group
Commerce West Insurance Company
Commercial Insurance Center
CommercialInsurance.net
Commercial Marketing Group
Commercial Union
Commonwealth
Communicating for America
Community Care
Community Care
Compare.com
CompareInsuranceQuotes
Compare Insurance Quotes
Comparenow
Comparequotes
Comparision Market
Complete Car
Complete Healthcare Direct, LLC
Confie
Connect Health Insurance
Connect Health Insured>
ConnectiCare
Connect Insurance Brands
Connect Life Plans
Connect Life Plans>
Connect Medicare Advantage
Connect Medicare Advantage>
Connect Medicare Supplement
Connect Medicare Supplement>
Connect One Health
Connect Plus
Consoco Life
Consumer Advocacy LLC
Consumer United
Contactability
Continental Casualty
Continental Divide Insurance
Continental Insurance
Continental Life
Conventry
Core Healthcare Solutions
Core Health Solutions
Corner Shop Media
Corner Stone Media
COTO INDUSTRIES LLC
Cotton States Insurance
Cottonwood
Countershot Media
Country Companies
Country Financial
Country Insurance and Financial Services
Countrywide Insurance
Couvillier Advisors
Coventry
Coventry Health Care
Coverage Choice LLC
Coverage One
Coverage One Insurance
Coverage One Insurance Group LLC
Coverage One Insurance Group, LLC
Coverance Insurance Solutions
Coverdell
CoverHound
Covidia
CPA Data Solutions LLC
Creative Emarketing
Creative Intelects
Credible Operations, Inc
Credit Union
Crisp-Results
Criterion
Crosspointe
Crosspointe Insurance and Financial Services LLC
Crosspointe Insurance & Financial Services, LLC
CSE
CSE Insurance Group
CS Marketing
Cultur, LLC
CUNA Mutual Group
Dairyland
Dairyland County Mutual Co of TX
Dairyland Insurance
Dakota Fire
Dashers
Datalot
DataMax
Dean Health
Debt.com
Deerbrook
Delphi Financial
Delta Auto Assurance
Delta Auto Protect
Dempsey Advisor
DentalInsurance.com
Depositors Emasc
Design Benefit Plans
Reply Comments of 28 State AGs, CG Docket Nos. 21-402 & 02-278
Mass Mutual
MassNexus
Mass Nexus
MatchMedia
Match Media Group
Matrix Direct
Matt Rudolph Insurance
Maxim Strategies
Maxxlocal
Mayberry Advisors Insurance Services
Mayo Lab
MCGP International
Mclaren Insurance Solutions
McLaren Insurance Solutions
MedGapDirect
MediGuard Alert, Inc
MediaAlpha
Media MatchGroup
Media Mix 365
Medica
Medical Card System Inc.
Medical Mutual of Ohio
Medicare10
Medicare10
Medicare/Advantage.com
Medicare Benefits Team
Medicare Connect
Medicare Group USA LLC
Medicare Help Centers
Medicare Providers
MedicareProz
Medicare Solutions
Medigap
Medi-Share
MEGA Life and Health
Mega/Midwest
Mellohome LLC
Memorial Hermann
Mendota
Merastar
Mercury
Mercury Insurance
Mercy
MetLife
Met Life
MetLife Auto and Home
Metromile
Metropolitan Co.
Metropolitan Insurance Co.
Mid Century Insurance
Mid-Continent Casualty
Middlesex Insurance
Midland National
Midland National Life
Midwest Mutual
Mid-West Ntl. Life
Migo Insure
Mikayla Data
Millbank
Millennial Home Lending
Millers Mutual
Milwaukee General
Milwaukee Guardian
Milwaukee Mutual
Minnehoma
Minnesota Mutual
Miro Health Agency
Mission Loans
Mississippi Insurance
Missouri General
MJ Direct
MMI Group
MMM Healthcare Inc.
Mobile Help
Modern Health, LLC
Modern Woodmen of America
Molina
Molina Healthcare Inc.
Montys Health Agency
Mony Group
Mortgage Maven
Mortgage Protection Bureau
Mortgage ProtectionPlus
Mortgage Protection Plus
Morty Inc.
Moss
Moss Affiliate
Moss Affiliate Marketing
Moss Affiliate Marketing Sellers
Motors
Mountain Financial
Mountain Laurel
M Plan Inc.
Mutual Health Partners
Mutual Insurance
Mutual Of Enumclaw
Mutual of New York
Mutual of Omaha
MVA Warranty
MVP
My Health Advisors
My Health Angel
My Health Group
MyHippo
MyInsuranceExpert
My Medicare Ally
National Alliance
National Auto Protection Corp.
National Ben Franklin Insurance
National Better Living Association
National Brokerage
National Brokers of America
National Casualty
National Colonial
National Continental
National Continental Insurance
National Debt Relief
National Disability
National Family Assurance Group, Inc.
National Fire Insurance Company of Hartford
National General
National General Insurance
National General Insurance Company (NGIC)
National Healthcare Market
National Health Connect
National Health Connect, LLC
National Health Hub
National Health Hub, LLC
National Health Insurance
National Health Plans
National Health Plans dba Your Lowest Quote
National Health Solutions
National Home Project
National Income Life Insurance Company
National Indemnity
Reply Comments of 28 State AGs, CG Docket Nos. 21-402 & 02-278
Valley Peak Insurance Group
Vanguard Health Ventures
Vantis Life
Vasa North Atlantic
Vehicle Assurance Co
Velapoint
VelaPoint Personal Insurance
Verengo
Verified Insurance Lead
Versible Connect
Versus Media Group
Verti Insurance
Verti Insurance Company
Veterans United Home Loans
Vigilant
Viking
Viking County Mutual Insurance
Viking Insurance Co of WI
VIMO
Visiqua
Visiqua LLC
Vitalone
Vitalone Health
Vital One Health
VitalOne Health Plans
Vital One Health Plans Direct, LLC
Viva Health
VSC Digital
VSC Group
Walking Tree Creative LLC
Warranty Agents
Warranty Direct
Wasatch Marketing Group
Washington National Life
Washington United LLC
Wawaunesa
Wax Digital Solutions
WEA Inc.
WebTec
we-Call Media
Wejo
Wellcare
WellCare Health Plans
Wellington
Wellness Plan of America
WellPoint
We Speak
West American
West Bend Mutual
Westcoast Closers
West Coast Closers
Western and Southern Life
Western Mutual
Western National
Western & Southern Financial
Western & Southern Life
Westfield
West Field
West Plains
Wholesale
Whoop Media
William Penn
Windhaven
Windsor
Windsor Insurance
Windstar
Wisconsin Mutual
Woodlands Financial Group
World Insurance

World Mail Direct USA
World of Insurance
Worldwide
Wyndham Capital Mortgage, Inc
WynnHealth
XLHealth
XLHealth.
Yellow Key
Yosemite
Young Life & Wealth
YourHealthCareQuotes.com
Your Help HQ
Your Lowest Quote
Zander
Zebra
ZebraA1333
Zenith Media
Zillow Home Loans, LLC
Zoom Insurance
ZQ Auto Insurance
ZQ Sales
Zurich
Zurich North America
Zurich North America or other partners