

**Before the
Federal Communications Commission
Washington, D.C.**

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

**REPLY COMMENTS OF THE AMERICAN BANKERS ASSOCIATION, ACA
INTERNATIONAL, AMERICAN FINANCIAL SERVICES ASSOCIATION, BANK
POLICY INSTITUTE, CREDIT UNION NATIONAL ASSOCIATION, MORTGAGE
BANKERS ASSOCIATION, NATIONAL ASSOCIATION OF FEDERALLY-INSURED
CREDIT UNIONS, NATIONAL COUNCIL OF HIGHER EDUCATION RESOURCES,
AND STUDENT LOAN SERVICING ALLIANCE TO THE FURTHER NOTICE OF
PROPOSED RULEMAKING**

Jonathan Thessin
Vice President/Senior Counsel
American Bankers Association
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 663-5016

Leah Dempsey
Counsel
ACA International
Brownstein Hyatt Farber Schreck, LLP
1155 F Street N.W., Suite 1200
Washington, DC 20004
(410) 627-3899

Celia Winslow
Senior Vice President
American Financial Services Association
919 18th Street, NW
Washington, DC 20006
(202) 776-7300

Brian Allen
Senior Vice President, Emerging Technology
Risk Management
Bank Policy Institute
1300 Eye Street, NW
Washington, DC 20005
(202) 289-4322

Elizabeth M. Sullivan
Senior Director of Advocacy and Counsel
Credit Union National Association
99 M Street, SE #300
Washington, DC 20003
(202) 503-7184

Justin Wiseman
Vice President, Managing Regulatory
Counsel
Mortgage Bankers Association
1919 M Street, NW
Washington DC 20036
(202) 557-2854

Ann Petros
Vice President of Regulatory Affairs
National Association of Federally-Insured
Credit Unions
3138 10th St. N.
Arlington, VA 22201
(703) 842-2212

James P. Bergeron
President
National Council of Higher Education
Resources
1050 Connecticut Ave. NW
Washington, DC 20035
(202) 494-0948

Scott Buchanan
Executive Director
Student Loan Servicing Alliance
2210 Mt. Vernon Avenue
Suite 207
Alexandria, VA 22301
(202) 955-6055

June 6, 2023

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY4

ARGUMENT.....8

 I. CONSUMERS AND BUSINESSES SUFFER SIGNIFICANT HARM WHEN
 BAD ACTORS SEND TEXT MESSAGES THAT IMPERSONATE
 LEGITIMATE COMPANIES WITH INTENT TO DEFRAUD.....8

 II. THE ASSOCIATIONS SUPPORT REQUIRING MOBILE WIRELESS
 PROVIDERS TO INVESTIGATE AND POTENTIONALLY BLOCK TEXT
 MESSAGES UPON NOTIFICATION.....9

 III. THE COMMISSION SHOULD REQUIRE TEXT MESSAGES TO BE
 AUTHENTICATED AND TAKE OTHER ACTION TO STOP TEXT
 MESSAGES THAT IMPERSONATE LEGITIMATE COMPANIES.....10

 IV. THE COMMISSION SHOULD ENSURE TEXT MESSAGES SENT BY
 LEGITIMATE COMPANIES ARE NOT BLOCKED, AND REQUIRE MOBILE
 WIRELESS PROVIDERS TO PROVIDE IMMEDIATE NOTIFICATION OF
 BLOCKING AND RESOLVE DISPUTES WITHIN SIX HOURS.....11

 V. THE ASSOCIATIONS URGE THE COMMISSION TO PROVIDE A
 DEFINITION OF “LOGICALLY AND TOPICALLY ASSOCIATED” IN THE
 FINAL RULE’S REGULATORY TEXT AND MAKE OTHER
 CHANGES.....13

CONCLUSION.....17

INTRODUCTION AND SUMMARY

The American Bankers Association (ABA), ACA International, American Financial Services Association, Bank Policy Institute, Credit Union National Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Council of Higher Education Resources, and Student Loan Servicing Alliance (the Associations) appreciate the opportunity to comment on the Further Notice of Proposed Rulemaking (Further Notice) in the above-captioned proceeding.¹ In the Further Notice, the Federal Communications Commission (Commission) proposes to (1) require terminating mobile wireless providers to investigate and potentially block texts from a sender after they are notified by the Commission that the sender is transmitting suspected illegal texts, (2) apply the National “Do Not Call” (DNC) Registry’s restrictions to text messages, and (3) restrict the ability of entities to obtain a consumer’s single consent and use that consent as the basis for multiple callers to place marketing calls to the consumer.

The Associations support the Commission’s efforts to combat illegal text messages. Banks, credit unions, and other financial services providers – and their customers – are negatively impacted by bad actors that increasingly send text messages that impersonate legitimate companies, with intent to defraud. Illegal text messages used to commit fraud or scams cost consumers nearly \$10.1 billion in 2021.² Currently, more fraudulent texts are sent—87.8 billion in 2021, up 58 percent from 2020—than fraudulent calls placed (72.2 billion in

¹ Report and Order and Further Notice of Proposed Rulemaking, *Targeting and Eliminating Unlawful Text Messages*, CG Docket No. 21-402, *Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-278, FCC 23-21 (Mar. 17, 2023) [hereinafter, *Report and Order and Further Notice*].

² AARP, *Ways to Avoid Smishing*, <https://www.aarp.org/money/scams-fraud/info-2020/smishing.html> (last visited June 6, 2023).

2021).³ These illegal texts also lead customers to question the legitimacy of the important messages that legitimate companies send, degrading our members' ability to communicate with their customers and eroding their customers' trust.

Our members invest significant resources to protect their customers from fraudulent text messages, as well as from fraudulent e-mails and voice calls. For example, more than 2,000 banks from across the country participate in ABA's #BanksNeverAskThat anti-phishing campaign to educate customers about phishing scams and how to avoid being victimized by them.⁴

The Associations support the Commission's efforts to identify and implement solutions to stop bad actors from sending fraudulent texts. Specifically, we support the Commission's proposal 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. We also urge the Commission to apply this requirement to entities that originate text messages, as these entities are best positioned to stop illegal texts from being sent in the first place.

We also urge the Commission to finalize a requirement that text messages be authenticated and set a deadline for the development and mandatory implementation of a text message authentication solution. The Commission should work with mobile wireless providers and other entities involved in the texting ecosystem to design an authentication framework that prevents bad actors from successfully sending text messages that impersonate legitimate

³ *Id.*

⁴ Am. Bankers Ass'n, *BanksNeverAskThat.com*, <https://www.banksneveraskthat.com/about> (last visited June 6, 2023).

companies, while at the same time ensuring that text messages from legitimate companies are not blocked.

Businesses often send informational text messages when circumstances require an immediate response. For example, financial institutions may send text messages to customers at the point-of-sale if transaction monitoring analytics suggests that it may be a suspicious transaction. In these cases, the institution seeks to confirm that the customer—and not a bad actor—is making the transaction. If the customer does not receive the text message, he or she cannot complete the sale. Alternatively, if the bad actor is the one making the transaction, the customer cannot take steps to stop the fraud if the customer does not receive the institution’s text message.⁵ It is imperative that these kinds of messages are not blocked. To facilitate the completion of text messages sent from legitimate companies, the Commission should require mobile wireless providers to notify the sender immediately when the provider has blocked the sender’s text message and to resolve disputes no longer than six hours after receiving the dispute.

In the Further Notice, the Commission proposes to restrict the practices of “lead generators” – i.e., companies that encourage consumers who have an interest in a certain product or service to provide their consent to be called. Some lead generators obtain consent for a large number of companies that may provide services unrelated to those on the website from which consent is obtained. The Commission proposes to allow an entity to use a consumer’s single

⁵ Financial institutions also are expected by their regulators to employ multi-factor authentication to prevent unauthorized individuals from accessing a customer’s account. *See* Fed. Fin. Insts. Examination Council, Authentication and Access to Financial Institution Services and Systems 6-8, <https://www.ffiec.gov/guidance/Authentication-and-Access-to-Financial-Institution-Services-and-Systems.pdf> (last visited June 6, 2023). To comply with this expectation, institutions often send a text message to customers when they attempt to access their account in order to verify the customer’s identity. Without access to the account, customers cannot determine the amount of funds available in their account or make other financial transactions.

consent as the basis for multiple callers to place calls only if those calls are to sell products and services that are “logically and topically associated” with the consent provided by the entity.⁶

Banks, credit unions, and other financial services providers may partner with third parties to provide products and services that respond to a consumer’s request or that the financial institution or its affiliate believes would be of interest to the consumer, based on the consumer’s past relationship with the institution. The call placed to the consumer is to promote a product or service that has a nexus to the consent provided. This relationship between the financial institution and third-party benefits consumers by expanding the products and services available to them, increasing competition among financial services providers, and furthering consumer choice. To ensure these consumer-benefiting third-party relationships are not impaired, we urge the Commission to define the term “logically and topically associated” broadly enough to discourage litigation targeting existing relationships that banks, credit unions, and other financial services providers have with third parties that expand the range of financial products available to consumers.

The Commission also proposes that the list of companies to which the consumer provides consent to be called must appear on the same web page where the consumer gives consent. We agree with LendingTree that, if the Commission requires disclosure of the list of entities that may place calls under the consent provided, it should be permissible for that list to be provided after the comparison-shopping service has matched the consumer to potential providers and before, or at the same time as, providers contact the consumer. We also urge the Commission to revise its proposed regulatory text to reflect that consumers may provide their consent to be called through

⁶ *Report and Order and Further Notice, supra* note 1, at App. C (to be codified at 47 C.F.R. § 64.1200(f)(9)).

means other than a webpage, including, but not limited to, checking a box on a mobile application, verbally consenting during a recorded phone call, or in writing. We oppose another commenter’s proposal that the Commission require that prior express consent to receive calls or texts “be made directly to one entity at a time.”⁷

ARGUMENT

I. CONSUMERS AND BUSINESSES SUFFER SIGNIFICANT HARM WHEN BAD ACTORS SEND TEXT MESSAGES THAT IMPERSONATE LEGITIMATE COMPANIES WITH INTENT TO DEFRAUD

In the Further Notice, the Commission seeks comment on the “extent of number spoofing.”⁸ Our members report that bad actors are increasingly using text messages that impersonate legitimate companies with intent to defraud. The primary method used by bad actors is to deliver Short Message Service (SMS) “phishing” text messages (or “smishing”) – i.e., text messages sent from the bad actor’s own phone number that purport to be from a legitimate business to induce the recipient to reveal account information or click on links that install malware on the recipient’s phone.⁹ One ABA member reported that bad actors are distributing large volumes of SMS phishing messages from e-mail addresses (which convert the e-mail message to an SMS text message) and from 10-digit telephone numbers that are not associated with the businesses being impersonated. Bad actors often send these “e-mail to SMS” messages from invalid telephone numbers – i.e., from telephone numbers that cannot accept incoming calls. These numbers are not uniquely assigned to different e-mail addresses and therefore cannot easily be reported and shut down.

⁷ *Id.*, ¶ 61.

⁸ *Report and Order and Further Notice*, *supra* note 1, ¶ 54.

⁹ See Barracuda, *What is Smishing?*, <https://www.barracuda.com/support/glossary/smishing> (last visited June 6, 2023).

The volume of text messages sent that impersonate legitimate companies—and the high financial cost to consumers who fall victim to these illegal schemes—underscore the urgency of the Commission’s work to stifle the ability of bad actors to send these messages.¹⁰

II. THE ASSOCIATIONS SUPPORT REQUIRING MOBILE WIRELESS PROVIDERS TO INVESTIGATE AND POTENTIALLY BLOCK TEXT MESSAGES UPON NOTIFICATION

We support the Commission’s proposal 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”¹¹ As stated in the preceding section, bad actors use numerous methods to send text messages that impersonate legitimate companies with intent to defraud. It is imperative that the Commission use every available tool to stop bad actors from sending texts to consumers that are illegal. As the Commission stated, where text messages are “clearly illegal, and where the Commission has put providers on notice of the illegal texts, . . . mobile wireless providers have no legitimate reason to transmit the texts.”¹²

We also urge the Commission to apply this requirement to entities that originate text messages. When an entity is on notice from the Commission that a sender is transmitting suspected illegal texts, the entity should investigate and potentially block texts from that sender. In the calling context, the Commission has required originating voice service providers to effectively mitigate illegal traffic generated by their customers and, in an order released on May

¹⁰ ABA members have shared with the association specific typologies that bad actors use to impersonate legitimate companies through text messages. We have chosen not to provide those typologies in this public comment letter, to avoid encouraging other bad actors to adopt these approaches, but are prepared to discuss the typologies with the Commission.

¹¹ *Report and Order and Further Notice*, *supra* note 1, ¶ 50.

¹² *Id.*

19, 2023, required originating providers to block illegal traffic upon notification.¹³ The Commission should adopt the same rule for entities that originate text messages.

III. THE COMMISSION SHOULD REQUIRE TEXT MESSAGES TO BE AUTHENTICATED AND TAKE OTHER ACTION TO STOP TEXT MESSAGES THAT IMPERSONATE LEGITIMATE COMPANIES

Last September, the Commission tentatively concluded that mobile wireless providers should implement caller ID authentication for text messages.¹⁴ In the Further Notice, the Commission asks how it might “encourage industry members to collaborate and finalize technical solutions for authenticating text messages and mitigating illegal text messages.”¹⁵ We urge the Commission to finalize a requirement that text messages be authenticated and set a deadline for the development and mandatory implementation of a text message authentication solution.

As described earlier, bad actors use numerous approaches to impersonate legitimate companies in text messages sent to consumers. We ask the Commission to work with mobile wireless providers and other entities involved in the texting ecosystem to design an authentication framework that prevents bad actors from sending to consumers text messages that impersonate legitimate companies, while at the same time ensuring that text messages from legitimate companies are not blocked. In designing an authentication framework, however, the Commission should recognize that legitimate companies frequently send text messages through “short code” text messages – a five- or six-digit number registered through CTIA’s short-code

¹³ *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, Seventh Report and Order in CG Docket 17-59 and WC Docket 17-97, Eighth Further Notice of Proposed Rulemaking in CG Docket 17-59, and Third Notice of Inquiry in CG Docket 17-59, ¶ 29 (released May 19, 2023).

¹⁴ *Targeting and Eliminating Unlawful Text Messages*, Notice of Proposed Rulemaking, FCC 22-72, CG Docket No. 21-402, ¶¶ 28-36 (Sept. 27, 2022).

¹⁵ *Report and Order and Further Notice*, *supra* note 1, ¶ 54.

registry that businesses use to send and receive text messages¹⁶ – or through a 10-digit number that is registered with a third-party aggregator. The Commission should ensure that the framework adopted does not interfere unduly with these texts.

The Commission also asks if there are other solutions, besides text message authentication, that can address the problem of illegal text messages.¹⁷ The Commission should consider whether existing laws and statutory penalties adequately deter mobile wireless providers and other entities from transmitting illegal text messages. If existing laws and penalties do not provide adequate deterrence, the Commission should propose that Congress enact stronger laws and penalties.

IV. THE COMMISSION SHOULD ENSURE TEXT MESSAGES SENT BY LEGITIMATE COMPANIES ARE NOT BLOCKED, AND REQUIRE MOBILE WIRELESS PROVIDERS TO PROVIDE IMMEDIATE NOTIFICATION OF BLOCKING AND RESOLVE DISPUTES WITHIN SIX HOURS

As the Commission works to develop an authentication requirement for text messages, the Commission must consider how legitimate companies send text messages and develop a framework that does not lead to the inadvertent blocking of our members’ texts. As described in the Introduction and Summary, companies often send informational text messages to their customers when circumstances require an immediate response. We appreciate that, in the Report and Order (Order) accompanying the Further Notice, the Commission recognized that legitimate companies often send text messages through short codes by clarifying that its requirement that mobile wireless providers block texts from unallocated or unassigned numbers “does not include

¹⁶ Short Code Registry, *Frequently Asked Questions*, <https://www.usshortcodes.com/learn-more/faq> (last visited May 2, 2023).

¹⁷ *Id.*

[blocking] text messages from short codes.”¹⁸ Our members report that they send text messages using several approaches, including from short codes and through a 10-digit number that is registered with a third-party aggregator. Using this knowledge, the Commission should design an authentication framework that prevents bad actors from sending text messages to consumers while ensuring that text messages sent by legitimate companies are not blocked. In addition, the Commission should provide a sufficiently long implementation period for any new rules so that vendors and other stakeholders in the texting ecosystem can modify their networks to ensure legitimate text messages are authenticated and not blocked.

In addition, we urge the Commission to require mobile wireless providers to notify the sender immediately when the provider has blocked the sender’s text message and to resolve disputes no longer than six hours after receiving the dispute. A sender of text messages can only take action to dispute an erroneous block if the sender knows that its text message has been blocked. In the Order, the Commission relied on a single commenter in reaching the conclusion that mobile wireless providers are “already providing adequate notice when they block texts.”¹⁹ This statement is incorrect. Our members report that they do not consistently receive notice when their outbound texts are blocked. Therefore, the Commission should require immediate notification of blocking.

As we have recommended previously, we also urge the Commission to require terminating providers to resolve disputes immediately, and no longer than six hours after receiving the dispute.²⁰ When a financial institution attempts to send a text message to confirm

¹⁸ *Report and Order and Further Notice*, *supra* note 1, ¶ 16.

¹⁹ *Id.*, ¶ 32.

²⁰ *See Targeting and Eliminating Unlawful Text Messages*, Comments of Am. Bankers Ass’n *et al.*, CG Docket No. 21-402, at 7-8 (filed Nov. 10, 2022), <https://www.fcc.gov/ecfs/document/1111457307833/1>.

that an attempted transaction is legitimate and not fraudulent, the customer must receive and respond to the text message immediately or the institution may stop the transaction from being completed. Similarly, when a company sends a text message to allow its customer to sign into his or her account (under multi-factor authentication), the customer must receive and respond to the text message immediately to gain access to the account. Under these circumstances, the provider should resolve the dispute over the blocking immediately. In no event should the resolution occur more than six hours after the text sender's report of the blocking. ABA members report that, based on their extensive work with voice service providers, terminating providers have the technical capability to resolve disputes within six hours.

V. THE ASSOCIATIONS URGE THE COMMISSION TO PROVIDE A DEFINITION OF “LOGICALLY AND TOPICALLY ASSOCIATED” IN THE FINAL RULE’S REGULATORY TEXT AND MAKE OTHER CHANGES

As described in the Introduction and Summary, “lead generators” may encourage consumers who have an interest in a certain product or service to provide their consent to be called. Companies for which the lead generator has obtained consent then use that consent to place calls to the consumer.

The Commission seeks to restrict this practice. Specifically, the Commission proposes to amend its regulations to require that consent be considered granted only to one or more callers “logically and topically associated” to the consent provided to the single entity that solicited consent and whose names are “clearly and conspicuously displayed to the consumer at the time consent is requested . . . on the same web page where the consumer gives consent.”²¹ In addition, the Commission seeks comment on a separate request from the advocacy organization Public

²¹ *Report and Order and Further Notice*, *supra* note 1, at App. C (to be codified at 47 C.F.R. § 64.1200(f)(9)).

Knowledge that the Commission require that prior express consent to receive calls or texts “be made directly to one entity at a time.”²²

Banks, credit unions, and other financial services providers may partner with third parties to provide products and services that respond to a consumer’s request or that the financial institution or its affiliate believes would be of interest to the consumer, based on the consumer’s past relationship with the institution. The relationship between the financial institution and third party is intended to benefit consumers by expanding the products and services available to them, increasing competition among financial services providers, and furthering consumer choice.

The Associations support the Commission’s efforts to allow entities to use a consumer’s single consent as the basis for multiple callers to place calls *only* if those calls are to sell products and services logically and topically associated to the consent provided by the single entity. However, the phrase “logically and topically associated” is ambiguous. We urge the Commission to provide a definition of “logically and topically associated” in the final rule’s regulatory text.

A definition of the term “logically and topically associated” is necessary because of the potentially significant impact that the Commission’s proposed restrictions on lead generators could have on third-party relationships that are not targeted by the restriction, but which could be inadvertently captured, as described below. The Commission should define the term broadly enough so that offers for credit cards, other consumer loans, or banking or credit union deposit products and services, would be “logically and topically associated” with consent provided at a website that advertises financial services. In contrast, a website describing financial services would not be “logically and topically associated” with a health care provider’s services and

²² *Id.*, ¶ 61.

should not be deemed consent for the consumer to be called by a health care provider, for example.

If the term “logically and topically associated” is not defined broadly enough, the Commission could encourage litigation targeting existing relationships that banks, credit unions, and other financial services providers have with third parties that expand the range of financial products available to consumers. This could potentially stifle these relationships which benefit consumers.

Our members have provided the following examples of third-party relationships where, under an appropriately broad definition of “logically and topically associated,” the consent provided is logically and topically associated with the call placed pursuant to that consent. In addition to providing a definition of “logically and topically associated” in the regulatory text, we ask the Commission to state that, under this definition, websites or entities offering financial services under these circumstances would be considered logically and topically associated:

- A consumer obtains a branded credit card from a merchant – i.e., a credit card issued by a financial institution that is partnering with the merchant – and provides (to the merchant) consent to be called by the financial institution. The Commission should clarify that calls placed by the financial institution to the consumer are “logically and topically associated” with the consent provided.
- A financial institution has a partnership with a company that offers relocation services. That company, in the course of serving its customer, suggests that the customer may have an interest in pursuing a financial product(s) from the partner financial institution. The customer provides consent (to the relocation services company) to be called by the financial institution. The Commission should clarify that calls placed by the financial institution to the customer are “logically and topically associated” with the consent provided.
- A small bank or credit union does not issue credit cards, but instead partners with a larger financial institution to offer this product. When a customer of the smaller institution seeks a credit card, the institution explains its relationship with the larger institution and obtains the customer’s consent to be called by the larger institution. The Commission should clarify that calls placed by the larger

institution to the customer are “logically and topically associated” with the consent provided.

- A financial institution has an affiliate that offers insurance products. The financial institution, in the course of serving its customer, suggests that the customer may have an interest in pursuing an insurance product(s) from the financial institution’s affiliate. The customer provides consent to the financial institution to be called by the insurance affiliate. The Commission should clarify that calls placed by the insurance affiliate are “logically and topically associated” with the consent provided.
- A consumer visits a third-party website, such as LendingTree.com, to seek a financial product or service and provides consent to be called by financial institutions. The Commission should clarify that calls placed by financial institutions that offer the product or service requested by the consumer are “logically and topically associated” with the consent provided.

In addition to the “logically and topically associated” requirement described above, the Commission proposes to require that, “[i]f 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.”²³ The Commission further states that, “[t]o be clearly and conspicuously displayed, the list must, at a minimum, be displayed on the same web page where the consumer gives consent.”²⁴ We support the Commission’s efforts to ensure consumers understand the entities to which the consumer is providing consent to be called. Nonetheless, we agree with LendingTree that the Commission’s requirement may be impractical and could confuse consumers. As LendingTree explained in its comments, “[c]ustomers provide consent before the matching process, at a time when the

²³ *Report and Order and Further Notice*, *supra* note 1, App. C (to be codified at 47 C.F.R. § 64.1200(f)(9)).

²⁴ *Id.*

specific providers that match with the customer’s request are unknown.”²⁵ We agree with LendingTree that, if the Commission requires disclosure of the list of entities that may place calls under the consent provided, that list should be provided after the comparison-shopping service has matched the consumer to potential providers and before, or at the same time as, providers contact the consumer.²⁶

The Commission also should broaden the means by which the list of entities to which the consumer is giving consent must be displayed or otherwise provided to the consumer.

Consumers may provide their consent by checking a box in a mobile application, providing verbal consent during a recorded phone call, or in writing. Consent also may be provided orally, including when consent is provided by a consumer with a visual impairment.

We also oppose Public Knowledge’s proposal that the Commission require that prior express consent to receive calls or texts “be made directly to one entity at a time.”²⁷ As described above, third-party websites can efficiently provide interested consumers with access to multiple banks, credit unions, or other financial services providers that offer the product or service sought by the consumer. This increases competition among institutions for each consumer’s business. Public Knowledge’s proposal would prevent third-party websites from connecting an interested consumer with multiple companies at once, to the detriment of the consumer.

²⁵ See *Targeting and Eliminating Unlawful Text Messages*, Comments of LendingTree, LLC., CG Docket No. 21-402, at 3 (filed May 8, 2023), <https://www.fcc.gov/ecfs/document/10508927220560/1>.

²⁶ *Id.* at 3 & 11. As LendingTree explained, the notice of providers could be provided in search results displayed to the customer or in an e-mail or notice sent by postal mail. *Id.* at 11.

²⁷ *Report and Order and Further Notice*, *supra* note 1, ¶ 61.

CONCLUSION

The Associations support the Commission's efforts to combat illegal text messages. We support the Commission's proposal 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. We encourage the Commission to apply this requirement to entities that originate texts. We also urge the Commission to require text messages to be authenticated, set a deadline for the development and mandatory implementation of a text message authentication solution, and ensure the authentication framework does not result in the blocking of texts from legitimate companies.

At the same time, the Commission should not impede the completion of text messages sent by legitimate businesses to their customers and other consumers. To protect these text messages, the Commission should require mobile wireless providers to notify the sender immediately when the provider has blocked the sender's text message and to resolve disputes no longer than six hours after receiving the dispute.

We also urge the Commission to revise its proposal that would allow an entity to use a consumer's single consent as the basis for multiple callers to place calls only if those calls are to sell products and services that are "logically and topically associated" with the consent provided. Specifically, we urge the Commission to provide a definition of "logically and topically associated" that is broad enough to protect the consumer-benefitting relationships that banks, credit unions, and other financial services providers have with third parties. We also urge the Commission to revise its proposed regulatory text so as not to require disclosure of the list of entities that may place calls under the consent provided until after the comparison-shopping service has matched the consumer to potential providers, and to reflect that consumers may

provide their consent to be called by means other than a webpage, including through a mobile application, over the phone, or in writing. In addition, we oppose Public Knowledge's proposal that the Commission require that prior express consent to receive calls or text "be made directly to one entity at a time."

Respectfully submitted,

s//Jonathan Thessin

Jonathan Thessin
Vice President/Senior Counsel
American Bankers Association
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 663-5016

s//Leah Dempsey

Leah Dempsey
Counsel
ACA International
Brownstein Hyatt Farber Schreck, LLP
1155 F Street N.W., Suite 1200
Washington, DC 20004
(410) 627-3899

s//Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association
919 18th Street, NW
Washington, DC 20006
(202) 776-7300

s//Brian Allen

Brian Allen
Senior Vice President, Emerging Technology
Risk Management
Bank Policy Institute
1300 Eye Street, NW
Washington, DC 20005
(202) 289-4322

s//Elizabeth M. Sullivan

Elizabeth M. Sullivan
Senior Director of Advocacy and Counsel
Credit Union National Association
99 M Street, SE #300
Washington, DC 20003
(202) 235-3390

s//Justin Wiseman

Justin Wiseman
Vice President, Managing Regulatory Counsel
Mortgage Bankers Association
1919 M Street, NW
Washington DC 20036
(202) 557-2854

s//Ann Petros

Ann Petros

Vice President of Regulatory Affairs

National Association of Federally-Insured
Credit Unions

3138 10th St. N.

Arlington, VA 22201

(703) 842-2212

s//James P. Bergeron

James P. Bergeron

President

National Council of Higher Education
Resources

1050 Connecticut Ave. NW #65793

Washington, DC 20035

(202) 494-0948

s//Scott Buchanan

Scott Buchanan

Executive Director

Student Loan Servicing Alliance

2210 Mt. Vernon Avenue

Suite 207

Alexandria, VA 22301

(202) 955-6055

June 6, 2023

APPENDIX

The American Bankers Association is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard \$18.7 trillion in deposits and extend \$12.2 trillion in loans.

ACA International represents approximately 1,800 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies are small businesses. The debt collection workforce is ethnically diverse, and 70% of employees are women. ACA members play a critical role in protecting both consumers and lenders. ACA members work with consumers to resolve their past debts, which in turn saves every American household more than \$700 year after year. The ARM industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost.

The American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with closed-end and open-end credit products including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost two million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

The Credit Union National Association, Inc. (CUNA) is the largest trade association in the United States representing America's credit unions, which serve more than 130 million members. Credit unions are not-for-profit, financial cooperatives established "for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive purposes."

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry that works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans.

The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 124 million consumers with personal and small business financial service products. NAFCU provides its credit union members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU proudly represents many smaller credit unions with relatively limited operations, as well as many of the largest and most sophisticated credit unions in the nation. NAFCU represents 77 percent of total federal credit union assets, 56 percent of all federally-insured credit union assets, and 74 percent of all federal credit union member-owners.

The National Council of Higher Education Resources' mission is to provide superior advocacy, communications, regulatory analysis and engagement, and operational support to its members so they may effectively help students and families develop, pay for, and achieve their career, training, and postsecondary educational goals.

The Student Loan Servicing Alliance (SLSA) is the nonprofit trade association that focuses exclusively on student loan servicing issues. Our membership is responsible for servicing over 95% of all federal student loans and the vast majority of private loans, and our membership is a mix of companies, state agencies, non-profits and their service partners. Our servicer members and affiliate members provide the full range of student loan servicing operations, repayment support, customer service, payment processing, and claims processing for tens of millions of federal and private loan borrowers across the country.