



February 28, 2023

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of *Ex Parte* Presentation, CG Dockets No. 21-402, 02-278

Dear Ms. Dortch:

This *ex parte* Notice relates to a telephone meeting held today between me and Mark Stone of the Consumer and Governmental Affairs Bureau. We discussed the fact that the Federal Communications Commission (FCC) determined in 2003 that texts are calls for purposes of the Telephone Consumer Protection Act,¹ that it specifically applied the Do Not Call regulations to wireless telephone numbers in 47 C.F.R 64.1200(e), and that numerous courts have applied the Do Not Call rules to texts.² As a result, the questions posed in the draft of the Further Notice of Proposed Rulemaking relating to Targeting and Eliminating Unlawful Text Messages³ in paragraphs 57, 58 and 59 (as well as the subtitle for that section) would be more clear if the words “extending,” “extend,” and “extension” in relation to the application of the DNC Registry were respectively changed to “clarifying,” “clarify,” and “clarification.”

This disclosure is made pursuant to 47 C.F.R. § 1.1206. Thank you for your consideration.

Sincerely,

/s/ Margot Saunders

¹ Report & Order, *In re* Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 18 F.C.C. Rcd. 14014, at ¶ 165 (F.C.C. July 3, 2003).

² *See, e.g.* Pariseau v. Built USA, L.L.C., 2022 WL 3139243 (M.D. Fla. Aug. 5, 2022) (text message is a call for purposes of do-not-call rule); Visco v. Creditors Relief, L.L.C., 2022 WL 488495 (D. Mass. Feb. 17, 2022); Barton v. Temescal Wellness, L.L.C., 525 F. Supp. 3d 195, 198–199 (D. Mass. 2021); Sagar v. Kelly Auto. Grp., Inc., 2021 WL 5567408 (D. Mass. Nov. 29, 2021) (text message is a call for purpose of do-not-call rule); Gill v. Align Technology, 2022 WL 1540016, at *3–4 (E.D. Wis. May 16, 2022) (failing to honor do-not-call request within reasonable time is a violation; refusing to dismiss claim that texting and calling plaintiff a few hours after her do-not-call request was a violation); Mantha v. Quotewizard.com, L.L.C., 2021 WL 6061919, at *9 (D. Mass. Dec. 13, 2021), adopted by 2022 WL 325722 (D. Mass. Feb. 3, 2022) (text message offering an insurance quote is a telephone solicitation, as its purpose is to encourage the purchase of a service); Barton v. Temescal Wellness, L.L.C., 525 F. Supp. 3d 195 (D. Mass. 2021) (text message touting sellers’ extended hours and including a link to its “menu” of goods and services was a solicitation). *See also* National Consumer Law Center, Federal Deception Law (4th ed. 2022) § 6.7.2.2.

³ <https://www.fcc.gov/document/protecting-consumers-robotext-blocking>.

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