



Responsible Enterprises
Against Consumer
Harassment

March 9, 2023

Ms. Marlene Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554

RE: Targeting and Eliminating Unlawful Text Messages, CG Dckt No. 21- 402;
Implementing the Telephone Consumer Protection Act of 1991, CG Dckt No. 02-278

Dear Ms. Marlene Dortch,

Responsible Enterprises Against Consumer Harassment, Mutual Benefit Corporation (“R.E.A.C.H.”), on behalf of its members, appreciates the opportunity to comment on the Commission’s intended notice of proposed rulemaking (“NPRM”)¹ proceeding ahead of the March 16, 2023 Open Meeting and suggests potential modifications to the NPRM ahead of its formal release, as set forth below. R.E.A.C.H. also requests the comment period be expanded to forty-five (45) days in light of the significance of the issues to be considered.

R.E.A.C.H., on behalf of its members, will provide more fulsome comments on the NPRM during the formal comment period.

I. ABOUT R.E.A.C.H.

R.E.A.C.H. is the dawn of a new era where responsible enterprises pursue a common objective of ensuring that consumers receive those calls which they have actually consented to and restore consumers’ ability to answer their phone. R.E.A.C.H.’s standards—attached hereto—would alleviate much of the concerns that the Commission has identified in the NPRM while allowing consumers the freedom to shop and benefit from responsible marketing, yet allowing businesses – small and large – to compete in a transparent and trustworthy manner.

R.E.A.C.H. – a Mutual Benefit Corporation – has been formed to advance the interests of direct-to-consumer marketers by: i) establishing guidelines, best practices and protections for such companies in order to prevent fraudulent lead sales and reduce the industry-wide damage caused by unwanted robocalls; ii) working to increase contact rates and lower carrier resistance to direct to consumer marketing traffic; and iii) providing education regarding, and advocacy to limit, unfair litigation and media attention targeting such marketing companies.

¹ See Circulation Draft, Targeting and Eliminating Unlawful Text Messages, Report and Order and Further Notice of Proposed Rulemaking, FCC-CIRC2303-04 (February 23, 2023) (Draft Order)

ERIC J. TROUTMAN

troutman@troutmanfirm.com / 530 Technology Drive, Ste 200, Irvine, CA 92618 / P: (949) 350-3663 F: (949) 203-8689



R.E.A.C.H. seeks to restore credibility to the lead generation industry by requiring all members to earn a certification of compliance with R.E.A.C.H. standards which are more restrictive than current regulations, thereby earning the recognition of good actors in revolutionizing the lead generation industry and assuring zero fraud tolerance.

II. R.E.A.C.H. APPLAUDS THE COMMISSION’S EFFORTS TO PROTECT CONSUMERS AND GET TO THE ROOT OF UNWANTED CALLS—BUT SUGGESTS A WELL-DEFINED MIDDLE GROUND SHOULD BE INCLUDED IN THE NPRM.

R.E.A.C.H. was born out of the abuses of the lead generation and performance marketing industries. Responsible direct to consumer marketers and lead suppliers had grown fed up with low-contact rates and consumer backlash to legitimate outreach. Its members believe the wholesale lack of articulable standards in the lead generation and performance marketing industries is to blame for between 500,000,000 and 1 billion unwanted calls per month. R.E.A.C.H.’s standards—attached as Exhibit A—represent the industry’s first attempt at presenting *comprehensive* standards that delineate precisely *how* consent must be obtained from a consumer, *who* it may be transferred to, and *for how long*.

These standards were designed to combat several forms of consumer abuse, that animate Public Knowledge’s request:

- Outright fraud by publishers and affiliates in the lead generation ecosystem who provide false information to companies hoping to connect with consumers interest in their goods or services;
- Tactics used by website operators to trick consumers into providing consent, or obtain consent using less than clear and transparent forms and/or website flows; and
- The endless resale of consent information—often in untrackable fashion—between numerous middlemen (aggregators and brokers) and for an unlimited duration of time.

R.E.A.C.H. applauds the Commission’s efforts to end these abusive and inappropriate tactics, but respectfully suggests Public Knowledge’s proposal of removing *all* intermediaries between a consumer and an ultimate provider of a good or service goes much too far.² Indeed, the

² R.E.A.C.H. reserves the bulk of its argument opposing the Public Knowledge proposal for the formal comment period, but provides these insights in support of a modification of the NPRM ahead of release.



Commission³ and Courts⁴ have repeatedly determined that consent can be provided to a caller via an intermediary. More broadly, it is well settled that contractual rights can be assigned and transferred with consent of the parties.⁵

On the other hand, the Commission may certainly provide standards as to when it is *reasonable* for a caller to rely on express written consent. The adoption of the R.E.A.C.H. standard for consent would provide a firm and clear standard by which reasonableness might be assessed in the context of online webform submissions and impose reasonable limits on those purchasing such submissions. For instance, the R.E.A.C.H. standards limit the number of partners that may be included in a disclosure, clearly advise the consumer—in a separate box akin to a Surgeon’s General warning—that telemarketing calls will result from an online submission, and prevent the use of prerecorded calls as the first contact to a consumer providing their information online, amongst other consumer-friendly requirements.

R.E.A.C.H. members believe these standards form a comprehensive and viable middle ground position that will protect consumers from abuse, on the one hand, but still allow ample breathing room for legitimate and responsible businesses to offer comparison shopping and other valuable (yet, free) online services to consumers, on the other. R.E.A.C.H. members recognize, however, that numerous stakeholders may have various suggestions and tweaks to propose to the standards and ought to be provided a fulsome opportunity to weigh in on a well-defined middle ground proposal—and not just the extreme proposal by Public Knowledge.

Indeed, it seems important for the Commission to have a middle ground at the ready to protect consumers in the event it determines Public Knowledge’s proposal is not viable, legal, constitutional, or desirable at the conclusion of the comment period. In that event, the Commission may have to start the NPRM process over anew owing to the lack of notice on any viable secondary options. Modifying the NPRM ahead of release to include the R.E.A.C.H. standards will, therefore,

³ *In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act*, 30 FCC Rcd. 7961, 7990–91 (July 10, 2015) (“the TCPA does not prohibit a caller from obtaining a consumer’s prior express consent through an intermediary.”); *Ruling, Matter of GroupMe, Inc./Skype Comm’ns S.A.R.L Petition for Expedited Declaratory Ruling Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 29 FCC Rcd 3442 at *4, para. 11. (March 27, 2014).

⁴ *Fober v. Mgmt. & Tech. Consultants, LLC*, 886 F.3d 789, 793 (9th Cir. 2018) (“a party that receives an individual’s phone number indirectly may nevertheless have consent to call that individual[.]”); *Mais v. Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110, 1124 (11th Cir. 2014) (“a person can consent to calls from a creditor by affirmatively giving an ‘intermediary’ [] permission to transfer her number to the creditor for billing purposes.”). *Baisden v. Credit Adjustments, Inc.*, 813 F.3d 338, 344 (6th Cir. 2016) (“...consent may be obtained by and conveyed through an intermediary.”)

⁵ Restatement (Second) of Contracts § 317(2) (1981) (“[a] contractual right can be assigned unless (a) the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor; or materially increase the burden or risk imposed on him by his contract, or materially impair his chance of obtaining return performance, or materially reduce its value to him, or (b) the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy, or (c) assignment is validly precluded by contract.”).



allow enhanced flexibility in the rulemaking process and empower the Commission to act vigorously to protect consumers regardless of whether Public Knowledge's proposal cannot be adopted wholesale.

III. R.E.A.C.H. SUGGESTS THE INITIAL COMMENT PERIOD BE EXTENDED TO NOT LESS THAN 45 DAYS.

The Public Knowledge proposal contained within the NPRM may have drastic and wide-ranging impact on several key consumer-facing industries. Most participants in these industries are small businesses—companies with less than 20 employees—and most lack the high degree of sophistication necessary to recognize the importance of the issues presented by the NPRM and the necessity of joining in the process to assure their voices are heard.

While efforts are ongoing to educate and empower these small businesses—and others—to speak up about the impact the NPRM may have, building the robust record the Commission wants and needs to effectuate thoughtful policy will take more time than the proposed 30 days. R.E.A.C.H. submits that 60 days is an appropriate timeframe, but suggests 45 days as a compromise position to allow as many would-be participants to provide their thoughts and comments as possible.

Additionally, to the extent the NPRM is modified to include the R.E.A.C.H. standards, additional time is also warranted as the standards are precise and comprehensive and many stakeholders will want the opportunity to thoughtfully consider the standards and test implementation and consumer response before weighing in.

IV. CONCLUSION

For these reasons R.E.A.C.H., on behalf of its members, respectfully requests a modification of the NPRM to seek comment on the R.E.A.C.H. standards as an acceptable middle ground and to extend the comment period to not less than 45 days.

Respectfully submitted,

/s/ Eric J. Troutman

Eric J. Troutman

R.E.A.C.H.

President

ERIC J. TROUTMAN



EXHIBIT A

R.E.A.C.H. STANDARDS

1. Scope and Purpose

The purpose of these rules is to assure maximum transparency in the lead generation process and the rules should be interpreted and applied through that lens.

These rules are NOT intended to be an articulation of the law as it currently stands. Indeed, these rules are FAR more restrictive than any current legal requirements, reflecting a commitment on the part of R.E.A.C.H. members to protect consumer privacy and restrict unwanted calls.

The rules apply solely to leads purchased from third parties, or intended to be sold to third parties, and do not apply to members in connection with the use of owned and operated properties.

A member lead seller (“MLS”) is any entity that has been duly admitted as a member of R.E.A.C.H. and sells any data to any member lead purchaser. An MLS may be a generator, reseller or aggregator—the same rules apply regardless.

A member lead purchaser (“MLP”) is any entity that has been duly admitted as a member of R.E.A.C.H.

A good or service provider (“GSP”), is a company that offers the good or service that a consumer is seeking. A GSP may also be—but need not be—an MLP.

2. Consent Events and Universal Warranty of Validity by MLS

A consent event is the online web session during which a consumer provided opt-in consent for subsequent contact.

A valid consent event is a consent event consistent with these rules.

MLSs represent and warrant that each, every, and all leads sold to any MLP arose from a consent event consistent with these Rules.

3. Rules Regarding Tracking and Disclosure of Publisher Partners; Use Thereof

An MLS shall not sell any lead to an MLP without knowledge of the lead source and URL on which the lead was generated.

Every MLS shall maintain a complete and accurate list—updated daily—of all publishers and URLs from which any lead sold by the MLS may be generated.

An MLS shall provide a list of all publishers and all affiliated URLs from which MLS may obtain leads sold to MLP.

All MLPs agree that such lists shall constitute trade secrets and shall not use any information disclosed by an MLS in connection with this provision except for purposes of vetting and onboarding. Any misuse of the information provided for in this provision is grounds for immediate expulsion, in addition to any other rights or remedies that may exist at law and are reserved to the MLS.

4. Website Consent Form Content Requirements for all Valid Consent Events

To be a valid consent event a consumer must accept—via a separate signature consistent with the E-SIGN Act— a standalone written provision stating:

1. The consumer is agreeing to receive automated or prerecorded calls and texts;
2. For marketing or promotional purposes;
3. The reasonably narrow subject matter about which the consumer is agreeing to receive such information (consistent with the rules set out in sections 7 and 13 below) and a warranty that data will not be sold for other purposes;
4. The maximum number of entities the consumer can expect to receive calls from (consistent with the rules set forth in sections 7 and 9 below) and a statement that each entity may attempt to call more than once;
5. The identities of all entities—including all GSPs—that may make such calls (consistent with the rules set forth in section 7 below);
6. A statement of how long the consent is good for and how a consumer can revoke consent earlier (consistent with the rules set forth in section 7 and 12 below);
7. A statement that consent is not a condition of any good or service, but that certain features of the website may be unavailable to those who do not provide consent;
8. A statement of how consent may be withdrawn and an assurance that R.E.A.C.H. members may share information about any opt out received by the consumer to others in the chain of sale of the lead for the purpose of assuring calls stop;
9. A statement that the website conforms to R.E.A.C.H. standards.

5. Consent Event Website Format Requirements

To be a valid consent event the required disclosure must appear in not less than 10 point black font against a white background in an offset box directly above the acceptance button and on the same page as the phone number provided.

The disclosure must emphasize the provision advising the consumer they will receive prerecorded and automated calls and texts for marketing purposes.

The acceptance button must include the word “Accept” in reference to the consent disclosure terms and may not otherwise mislead the consumer regarding the effect of the acceptance of the disclosure.

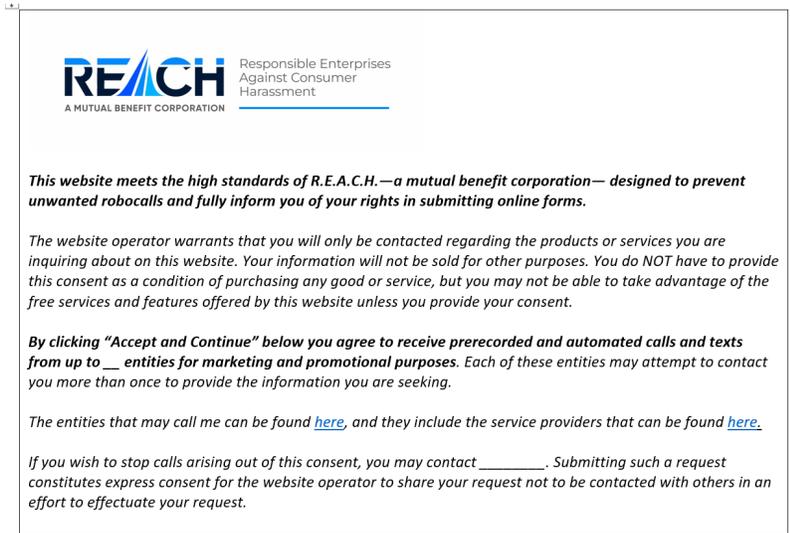
All hyperlinks must be blue.



No portion of any website on which a valid consent event takes place shall be designed to deceive or confuse the consumer. All promises made to a consumer must be kept.

MLS must include a R.E.A.C.H. logo as part of the disclosure.

An acceptable layout template is as follows:



6. Assurance that Warranties on Disclosure Are not Violated; Remedies

An MLS must assure that all warranties made as part of the consent disclosure are not violated.

This means, for instance, that an MLS must not sell any lead that to a party, or in a manner, that would result in:

1. The consumer receiving calls from more entities than the consumer agreed to receive calls from; or
2. The consumer receiving calls for purposes unrelated to the information sought by the consumer as part of the consent event.

For the avoidance of doubt, the website operator and any MLS that sells a lead arising from a consent event are jointly and severally liable for any violations of this provision.

Intentional or repeated violations of this provision are grounds for immediate expulsion from R.E.A.C.H., publicity penalties—see section 17 below—in addition to any other legal or equitable rights or remedies that may exist.

7. Disclosure of Marketing Partners and GSPs

An MLS must assure that the consent event discloses—either directly in the disclosure or via a blue hyperlink—a valid and accurate list of entities that may contact the consumer. The list may contain ONLY entities that may actually be sold the lead DIRECTLY from the website operator or from ultimate GSPs and in no event shall a valid consent event include a disclosure with over



85 disclosed partner entities—no more than 35 of which can be GSPs. For purposes of this provision, individual licensed professionals employed by, or affiliated with, a partner entity are considered part of that partner entity and constitute only a single disclosure against the 85 limit.

An MLS must also assure that the consent event discloses—either directly in the disclosure or via a blue hyperlink—a valid and accurate list of GSPs that may ultimately contact the consumer. The list may contain ONLY entities that may actually provide the type of good or service the consumer inquired regarding—but need not be restricted based upon information provided in the web session—and in no event shall a valid consent event include a disclosure with over 35 disclosed GSPs.

The disclosed list of MLP and GSP entities must be presented in a manner that the consumer can opt-in/out their consent for each entity.

8. Required Use of Third-Party Witness Software and Fraud Detection

All consent events underlying any lead sold by any MLS to any MLP shall:

1. Be actual and legitimate interactions with consumers (or individuals believed by the website operator and the MLS to be legitimate consumers);
2. Have been witnessed—consistent with all applicable laws related to wiretapping and privacy—by a third-party software that documented all available web session details and can confirm the content of all disclosures—including hyperlink pages—as accepted on the date in question. When available it shall be the responsibility of the MLP to purchase and store any certificate or record of the consent event.;
3. Have been obtained on a website—or provided to a website—and filtered by a Media Rating Council (MRC) accredited OR Trustworthy and Accountability Group (TAG) certified fraud solution, using a sophisticated invalid traffic (SIVT) filter, to assure the interaction was a legitimate consumer interaction and not the result of any form of detectable fraud.

9. Limitation on the Number of Times leads May Be Sold

As a consumer must be advised of precisely the number of entities that may contact him or her, an MLS must limit the sale of leads—and assure sufficient visibility in terms of the number of times a lead was previously sold—to assure that the warranties made to the consumer are not violated.

10. Prohibition on Any Form of Oral Opt In

A valid consent event can only occur in writing. No oral consent of any kind—including via recorded calls—may ever constitute opt in for a lead sold by an MLS to an MLP.

11. Prohibition on Any Third-Party Acceptance of Consumer Disclosure

A valid consent event is one submitted by a consumer—or a consumer’s designee—directly onto a website conforming to these Rules.

A consumer’s designee cannot be any website operator, publisher, or affiliate.



12. Limitations on Sale of Aged Leads

As a consumer must be advised of precisely how long a consent is valid for, an MLS must limit the sale of leads to assure that the warranties made to the consumer are not violated.

13. Limitations on Multi-Vertical Websites

As a consumer must be advised of precisely the scope of their consent, an MLS must limit the sale of leads to assure that the warranties made to the consumer are not violated. A disclosure must clearly and transparently advise the consumer of the single subject matter they are consenting to receive calls regarding. Multi-vertical disclosures are presumptively invalid under this rule.

These limitations do not apply to multi-vertical websites where the consumer is clearly informed that multiple goods and service categories may be available on that site and the consumer is permitted to accept separate disclosure for each category of good or service, provided all other consent requirements of these rules are complied with.

14. Prohibition on Sweepstakes or Give Away Website Consents

Except where a sweepstakes, prize, or giveaway offer is a good or service about which a consumer is seeking information, no sweepstakes, prize, or giveaway offer websites may underlie a consent event.

15. Prohibition on Use of Prerecorded Calls as Initial Contact

Following 180 days of membership into R.E.A.C.H., no MLS shall use prerecorded or artificial voice technology to make initial contact with a consumer, or authorize any third party to do so, or sell any lead to any MLP where an initial contact with a consumer was made using any prerecorded or artificial voice technology.

Prerecorded or artificial voice technology include prerecorded and artificial voicemails, outbound IVR, ringless voicemail, and any other contact method where the consumer's first interaction over the telephone is with a synthesized human voice.

Nothing in this provision shall prevent the use of such technology—assuming a valid consent event has occurred and not been withdrawn—after a consumer has been successfully contacted by the caller.

All prerecorded voice calls shall comply with every element of the content requirements of applicable TCPA, TSR and regulatory provisions.

16. Prohibition on the Purchase of Non-Conforming Leads

MLP shall begin to focus on purchasing R.E.A.C.H. conforming leads immediately upon entry and agree to cease purchase of any leads that do not conform to these rules within 270 days of membership in R.E.A.C.H.

17. Public Disclosure Provision



As R.E.A.C.H. membership carries with it a great deal of honor—and as R.E.A.C.H. members are viewed as good actor and receive the benefits and privileges of such designation—all R.E.A.C.H. members agree that intentional, or repeated, violations of the R.E.A.C.H. rules occurring after 180 days of R.E.A.C.H. membership that result in expulsion may be PUBLICALLY revealed—at the sole discretion of the R.E.A.C.H. President— to remedy any past benefit received by the wrongdoer in falsely representing their commitment to abide by R.E.A.C.H. standards.

A R.E.A.C.H. member may voluntarily withdraw from membership without penalty, but all withdrawals from R.E.A.C.H. may be noted on its website, without comment.

R.E.A.C.H. members will be asked to waive—as a condition of membership—any right of action or claim related to this publish disclosure provision in the event an expulsion takes place.

18. Modification by Contract

Any responsibility assigned to an MLS or an MLP may be shifted between the parties by contract provided that all responsibilities, requirements and limitations set forth herein are followed.

