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List of Subjects in 34 CFR Part 5

Administrative practice and procedure, Investigations.

Accordingly, part 5 of title 34 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC

- 1. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 552, 20 U.S.C. 1221e-3, and 20 U.S.C. 3474.

- 2. Section 5.40 is amended by revising paragraph (b) to read as follows:

§ 5.40 Appeals of Adverse Determinations.

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(b) A requester must submit an appeal within 90 calendar days of the date on the adverse determination letter issued by the Department or, where the requester has received no determination, at any time after the due date for such determination. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal.

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Alexis Barrett,

*Chief of Staff, Office of the Secretary,
Department of Education.*

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[CG Docket Nos. 21-402, 02-278, 17-59; FCC 23-107; FR ID 194243]

Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991, Advanced Methods To Target and Eliminate Unlawful Robocalls

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) requires terminating mobile wireless providers to block text messages from a particular number following notification from the Commission. The Commission also codifies that the National Do-Not-Call (DNC) Registry's protections extend to text messages. In addition, the Commission encourages mobile wireless providers to make email-to-text, a major source of illegal texts, a service that consumers proactively opt into. The Commission closes the lead generator loophole by requiring comparison shopping websites to get consumer consent one seller at a time, if prior express written consent is required under the Telephone Consumer Protection Act (TCPA), and thus prohibits abuse of consumer consent by such websites. Finally, the Commission adopts a limited waiver to allow providers to use the Reassigned Numbers Database (RND) to determine whether a number that the Commission has ordered to be blocked has been permanently disconnected. Such waiver will help prevent blocking of lawful texts from a new subscriber to the number.

DATES: This rule is effective March 26, 2024, except for the amendment to 47 CFR 64.1200(s), in instruction 5, which is effective July 24, 2024, and the amendment to 47 CFR 64.1200(f)(9), in instruction 6, which is effective January 27, 2025.

FOR FURTHER INFORMATION CONTACT:

Jerusha Burnett of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at jerusha.burnett@fcc.gov, 202 418-0526, or Mika Savir of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at mika.savir@fcc.gov or (202) 418-0384.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order and Waiver Order, in

CG Docket Nos. 21-402, 02-278, and 17-59, FCC 23-107, adopted on December 13, 2023, and released on December 18, 2023. The full text of this document is available online at <https://docs.fcc.gov/public/attachments/FCC-23-107A1.pdf>. To request this document in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530.

Congressional Review Act

The Commission sent a copy of document FCC 23-107 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. This document will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding.

Synopsis

1. **Mandatory Blocking Following Commission Notification.** In the Second Report and Order, the Commission adopts, with some modification, proposals in the Further Notice of Proposed Rulemaking (FNPRM), published at 88 FR 21497 on April 11, 2023. First, the Commission specifically requires terminating mobile wireless providers to block all text messages from a particular number following notification from the Commission of illegal texts from that number or numbers. Upon receipt of such notice, a terminating wireless provider must block all texts from the number and respond to the Commission's Enforcement Bureau indicating that the provider has received the notice and is initiating blocking.

2. Under this rule, the Commission's Enforcement Bureau may notify terminating providers of illegal texts from a number or numbers and such Notification of Illegal Texts shall: (1) identify the number(s) used to originate the illegal texts and the date(s) the texts were sent or received; (2) provide the

basis for the Enforcement Bureau's determination that the identified texts are unlawful; (3) cite the statutory or regulatory provisions the illegal texts violate; (4) direct the provider receiving the notice that it must comply with 47 CFR 64.1200(s) of the Commission's rules; and (5) provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Notification of Illegal Texts shall specify a reasonable time frame for the notified provider to respond to the Commission's Enforcement Bureau and initiate blocking. The Enforcement Bureau shall publish the Notification of Illegal Texts in EB Docket No. 23-418.

3. Upon receiving the Notification of Illegal Texts, the provider must promptly begin blocking all texts from the identified number(s) within the timeframe specified in the Notification of Illegal Texts. The provider must respond to the Enforcement Bureau, including a certification that it is blocking texts from the identified number(s). If the provider learns that some or all of the numbers have been reassigned, the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates the number has been reassigned. If the provider subsequently determines that the number has been reassigned, it shall notify the Enforcement Bureau and cease blocking. In such instances, the Commission encourages providers to continue to use other available methods to protect their customers. Providers are not required to monitor whether any numbers subject to this blocking requirement have been reassigned, but are required to notify the Commission and cease blocking if the provider learns of a number reassignment.

4. The Commission does not adopt any additional protections in case of erroneous blocking, but any individual or entity that believes its texts are being blocked under this rule in error can make use of the point of contact required under 47 CFR 64.1200(r) of the Commission's rules. If the provider determines that blocking should cease, it should notify the Enforcement Bureau of that finding, including any evidence that supports that finding.

5. This rule shall be effective 180 days after publication of this Second Report and Order in the **Federal Register**, to allow providers additional time to ensure that they are prepared to comply. However, the Commission states that this rule does not require Paperwork Reduction Act (PRA) approval as it falls under the exception for collections undertaken "during the conduct of . . . an administrative action or investigation

involving an agency against specific individuals or entities."

6. *National Do-Not-Call Registry.* The Commission adopts the proposal to codify the National DNC Registry's existing protections to text messages. Texters must have the consumer's prior express invitation or permission before sending a marketing text to a wireless number in the DNC Registry. The Commission previously concluded that the national database should allow for the registration of wireless telephone numbers and that such action will further the objectives of the TCPA and the Do-Not-Call Act. The Commission's action is consistent with Federal court opinions and will both deter illegal texts and make DNC enforcement easier.

7. *Email-to-Text Messages.* The Commission encourages providers to make email-to-text an opt-in service as a way to reduce the number of fraudulent text messages consumers receive. Texts originating from email addresses, rather than telephone numbers, account for a significant percentage of fraudulent text messages. For example, email-to-text gateways enable anyone to send a text message to a mobile subscriber in relative anonymity. The email-to-text messages process allows the sender to be anonymous because the text is sent from an email account on a computer, not a phone number.

8. *Closing the Lead Generator Loophole.* The Commission makes it unequivocally clear that texters and callers must obtain a consumer's prior express written consent to robocall or robotext the consumer soliciting their business. This requirement applies to a single seller at a time, on the comparison shopping websites that often are the source of lead generation. Lead-generated communications are a large percentage of unwanted calls and texts and often rely on flimsy claims of consent to bombard consumers with unwanted robocalls and robotexts. The Commission also requires that the consent must be in response to a clear and conspicuous disclosure to the consumer and that the content of the ensuing robotexts and robocalls must be logically and topically associated with the website where the consumer gave consent.

9. The Commission adopts additional protections to further guard against consent abuse and protect consumers from unwanted robocalls and robotexts. First, the one-to-one consent must come after a clear and conspicuous disclosure to the consenting consumer that they will get robotexts and/or robocalls from the seller. "Clear and conspicuous" means notice that would be apparent to

a reasonable consumer. In addition, if compliance with the Federal Electronic Signatures in Global and National Commerce Act (the E-Sign Act) is required for the consumer's signature, then all the elements of E-Sign must be present.

10. Second, the Commission adopts the requirement that robotexts and robocalls that result from consumer consent obtained on comparison shopping websites must be logically and topically related to that website. Thus, for example, a consumer giving consent on a car loan comparison shopping website does not consent to get robotexts or robocalls about loan consolidation. The Commission declines to adopt a definition of "logically and topically." This rule best balances the desire of businesses to utilize lead generation services to call and text potential customers with the need to protect consumers, including small businesses, from a deluge of unwanted robocalls and robotexts.

11. The Small Business Administration's Office of Advocacy notes that certain small businesses rely on purchasing sales leads from lead generators; however, the rule adopted today only limits sellers, of any size, from robocalling or robotexting consumers who did not explicitly consent to receive such communications from a particular seller. Lead generators can still conduct business and collect and share leads to consumers interested in products and services, they just will not be able to collect and share the consents for telemarketing calls that included an artificial or prerecorded voice or are made with an automatic dialer. Sellers that wish to use robocalls and robotexts for such communications may still do so—provided they obtain consent consistent with the reasonable limits codified in the rule.

12. This rule does not restrain comparison shopping, nor does it unnecessarily constrain a businesses' ability to rely on leads purchased from lead generators. For example, consumers may reach out to multiple businesses themselves or ask to be contacted by businesses only through means other than robocalling and robotexting. Further, sellers may avail themselves of other options for providing comparison shopping information to consumers, e.g., they may initiate calls or texts to consumers without using an autodialer or prerecorded or artificial voice messages or they may use email or postal mail, both to provide information and to solicit further one-to-one consent to robocall or robotext. Nothing in this rule restricts the ability of businesses,

including small businesses, from relying on leads generated by third-party lead generators.

13. Additionally, even under the Commission's new rule, comparison shopping websites can obtain the requisite consent for sellers to robocall and robotext consumers using easily implemented methods. For instance, a website may offer a check box list that allows the consumer to choose each seller that they wish to hear from. Alternatively, a comparison shopping website may offer the consumer a clickthrough link to a business so that it may obtain requisite consent from the consumer directly. The rule does not prohibit websites from obtaining leads and merely codifies reasonable limits on when those leads allow sellers to use robocalls and robotexts to reach consumers.

14. Further, the rule protects callers who rely on leads generated by third parties by ensuring that such callers operate pursuant to legally sufficient consent from the consumers. A caller who is unable to meet its burden of proof in demonstrating that it had valid consent to initiate and robocall or robotext the individual consumer would be liable under the TCPA for making such a call. The rule helps callers and texters, including small businesses, by providing legal certainty as to how to meet their burden of proof when they have obtained consent via a third-party. Businesses relying on such leads will have an easier and more certain way to demonstrate that they have obtained valid consent to call.

15. In addition, the Commission finds that small businesses themselves will benefit from the protections adopted. Small businesses use comparison shopping services when comparison shopping for businesses services. The prior express written consent requirements are not limited to residential lines; these requirements extend to and protect business phones from having their own phones inundated with unwanted calls and texts. Such calls to these businesses may tie up small business phones, annoy small business employees, and subject them to the same type of fraud as consumers generally.

16. The Commission wants this important consumer protection rule to be successfully implemented by comparison shopping websites and lead generators. The Commission is adopting a 12 month implementation period to make the necessary changes to ensure consent complies with the new requirement. This implementation period will help mitigate some challenges to implementation of the

new rules and such period should provide both lead generators and the callers that rely on the leads they generate ample time to implement our new requirements.

17. The Commission will continue to monitor the impact that the rule has on small businesses and delegates to the Consumer and Governmental Affairs Bureau authority to conduct outreach and education focusing on compliance with rules for small business lead generators as well as for small business lead buyers. The Commission also reiterates that the TCPA and existing rules already place the burden of proof on the texter or caller to prove that they have obtained consent that satisfies Federal laws and regulations. They may not, for example, rely on comparison websites or other types of lead generators to retain proof of consent for calls the seller makes. And, in all cases, the consent must be from the consumer. "Fake leads" that fabricate consumer consent do not satisfy the TCPA or the Commission's rules. In addition, the consumer's consent is not transferrable or subject to sale to another caller because it must be given by the consumer to the seller.

18. The Commission also disagrees with the argument that making it unequivocally clear that one-to-one consent is required for TCPA prior express written consent, is arbitrary and capricious. The Commission sought comment on this issue of consent in the FNPRM, published at 88 FR 21497 on April 11, 2023, specifically discussed the issue of hyperlinks in a comparison shopping website, and illustrated the problem by describing Assurance IQ, a website that purports to enable consumers to comparison shop for insurance. As the Commission explained, the Assurance IQ site sought consumer consent for calls and texts from insurance companies and other various entities, including Assurance IQ's "partner companies," that were listed when accessing a hyperlink on the page seeking consent (*i.e.*, they were not displayed on the website without clicking on the link) and included both insurance companies and other entities that did not appear to be related to insurance. The Commission also sought comment on amending the TCPA consent requirements to require that such consent be considered granted only to callers logically and topically associated with the website that solicits consent and whose names are clearly disclosed on the same web page. Numerous commenters supported the Commission's proposals. Thus, the Commission's findings in the Second Report and Order are reasonably and

rationally based on the issues for which the Commission sought comment and the comments filed.

19. *Text Message Authentication and Spoofing.* The Commission does not adopt at this time caller ID authentication requirements for text messaging.

20. *Summary of Benefits and Costs.* The Commission's conservative estimate of the total loss from unwanted and illegal texts is \$16.5 billion annually, which reflects both a substantial increase in the number of spam texts in recent years (the nuisance cost), and an increase in financial losses due to text scams. The Commission estimates the nuisance cost of spam texts to be five cents per text. This cost is multiplied by 225.7 billion spam texts sent annually and the result is \$11.3 billion in total nuisance cost. In addition, the Commission estimates financial losses due to text scams to be \$5.2 billion. Further, the total loss from unwanted and illegal calls is relevant for the Commission's consideration of the benefit generated by closing the lead generator loophole. The harm of unwanted and illegal calls is at least \$13.5 billion annually.

21. The Commission expects the actions in the Order will impose minimal costs on mobile wireless providers and comparative shopping websites. Nothing in the record demonstrates that requiring terminating providers to block texts when notified by the Commission of illegal texts would impose significant costs on mobile wireless providers. The Commission expects that terminating providers aim to minimize texts that subject their customers to nuisance and receiving notifications from the Commission would assist in that effort and help providers improve customer satisfaction. With respect to the action codifying that text messages are covered by the National DNC Registry's protections, the Commission sees no additional cost to providers.

22. The Commission notes that the new rules do not prohibit comparison shopping websites, only the use of robocalls and robotexts without one-to-one consent. The Small Business Administration's (SBA) Office of Advocacy notes that small businesses have stated that the proposal to require sellers to obtain consent to robocall or robotext from one consumer at a time could increase costs significantly for small businesses that both buy and sell sales leads, but the SBA did not offer any evidence to support this contention and did not address the benefit to both consumers and to small businesses in having a reduction of unwanted calls

and texts. This new rule makes it unequivocally clear that prior express written consent under the TCPA must be to one seller at a time, but does not prevent small businesses from buying and selling leads nor does it prevent small businesses from contacting consumers. The Commission observes that the rule is especially helpful for small business owners who are incentivized to answer all incoming calls because each call may be from a potential customer and are unable to ignore calls from unfamiliar numbers. In addition, this requirement will help small businesses because it will provide legal certainty as to how callers and texters can demonstrate valid consent when that consent was obtained via a third party.

23. The Commission's decision to make unequivocally clear that prior express written consent under the TCPA must be one-to-one consent may raise costs for some businesses that use robocalling, including those that fall under the definition of small businesses; however, no party has presented any specific data to substantiate such possible additional costs. Further, the benefits of making it unequivocally clear that one-to-one consent is required for prior express written consent under the TCPA, will accrue to millions of individuals and businesses, including small businesses, and will outweigh any such costs to those businesses currently using multi-party "consent" for robocalls and robotexts. Any effort to create an exception for particular businesses, including small businesses, has the potential to undermine the effectiveness and intent of the policy, which is to provide consumers (including small businesses) the ability to determine when and how they are contacted in a transparent manner.

24. The Commission sees very little cost to providers as a result of the encouragement to make email-to-text an opt-in service. Providers who do not take up this option will incur no additional cost and, for those providers who do so, the benefits of making email-to-text an opt-in service, e.g., more satisfied customers, outweighs the costs of setting up an opt-in program and marketing it to their subscribers. Similarly, closing the lead generator loophole so that prior express written consent can only be given directly from a consumer to a single seller-caller at a time will result in only small additional costs for comparative shopping websites and should lead to greater customer satisfaction that may benefit such websites.

25. Based on the analysis of the anticipated benefits and costs discussed

above, the Commission believes the benefits of the rules adopted in the Report and Order significantly outweigh their costs. Even if these rules eliminate only a small share of unwanted and illegal texts and calls, the benefits would be substantial, given the magnitude of the likely losses from such texts and calls.

26. *Legal Authority.* The Commission relies on the TCPA to adopt rules applicable to mobile wireless text messaging providers, including the text blocking requirement. First, the TCPA gives the Commission authority over the unsolicited text messages within the scope of the Order. The TCPA, in relevant part, restricts certain autodialer calls to wireless telephone numbers absent the prior express consent of the called party. The Commission has found that, for the purposes of the TCPA, texts are included in the term "call." Because the Commission has authority to regulate certain text messages under the TCPA, particularly messages sent using an autodialer and without the consent of the called party, the Commission has legal authority to require providers to block text messages that violate the TCPA. The TCPA also provides authority for the consent requirements and the codification that text messages are covered by the National DNC Registry. The DNC restrictions have long applied to wireless phones and the Commission and courts have long held that text messages are calls under the TCPA. Further, the Commission is codifying that text messages are included in the National DNC Registry's protections—a position that the Commission and several courts have previously taken—not expanding the National DNC Registry's restrictions.

27. To the extent that the Commission may direct providers to block texts where an autodialer has not been used, the Commission further finds authority under section 251(e)(1) of the Communications Act. Section 251(e)(1) provides the Commission with independent jurisdiction to prevent the abuse of North American Numbering Plan (NANP) resources, regardless of the classification of text messaging. Requiring blocking of a particular number that has sent known illegal texts will help ensure that entities sending illegal texts cannot continue to abuse NANP resources to further their illegal schemes. Although NANP numbers are used for routing calls on the public switched telephone network (PSTN), the authority granted in section 251(e)(1) of the Act is not restricted to voice calls routed via the PSTN. Rather, section 251(e)(1) is a clear grant of authority "over those portions of the North

American Numbering Plan that pertain to the United States" and the underlying technology does not change the fact that the numbers in question are portions of the NANP that pertain to the United States. The Commission exercises its section 251(e)(1) authority to prevent the abuse of NANP resources by sending illegal texts, regardless of whether the number is spoofed. This is consistent with the Commission's approach in calling, where the Commission has found that authority under this section does not hinge on whether a call is spoofed. The Commission also finds authority under Title III of the Act to adopt these measures. Title III "endow[s] the Commission with 'expansive powers' and a 'comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest.''" Section 303 of the Act grants the Commission authority to establish operational obligations for licensees that further the goals and requirements of the Act if such obligations are necessary for the "public convenience, interest, or necessity" and are not inconsistent with other provisions of law. In particular, section 303(b) authorizes the Commission to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within each class," and that is what the notice requirement and blocking rule addresses here. In addition, sections 307 and 316 of the Act allow the Commission to authorize the issuance of licenses or adopt new conditions on existing licenses if such actions will promote public interest, convenience, and necessity. The Commission finds that the requirements adopted for mobile wireless providers after they are on notice of illegal text messages are necessary to protect the public from illegal text messages and that such a requirement is in the public interest.

28. *Waiver Order.* The Commission adopts a waiver, *sua sponte*, for a period of 12 months, to commence on the effective date of 47 CFR 64.1200(s) of the Commission's rules, specifically to allow mobile wireless providers to access the Reassigned Numbers Database to determine whether a number has been permanently disconnected since the date of the illegal text described in the Notification of Illegal Texts. The Commission delegates authority to the Consumer and Governmental Affairs Bureau to extend the term of this waiver, if needed. The Commission's rules require providers ensure the efficient use of telephone numbers by reassigning a telephone

number to a new consumer after it is disconnected by the previous subscriber; however, when a number is reassigned, callers may inadvertently reach the new consumer who now has the reassigned number (and may not have consented to calls from the calling party). To mitigate these occurrences, the Commission established a single, comprehensive database to contain reassigned number information from each provider that obtains NANP U.S. geographic numbers, which enables any caller to verify whether a telephone number has been reassigned before calling that number. The use of the RND to determine if a number has been disconnected following a Notification of Illegal Texts is outside of the original scope of the RND which is available only to callers who agree in writing that the caller (and any agent acting on behalf of the caller) will use the database solely to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts. The Commission may waive its rules for good cause shown. Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The Commission finds that permitting providers to access the RND for the purpose of determining if a number has been permanently disconnected after the date of an illegal text described in a Notification of Illegal Texts would prevent erroneous blocking of text messages (if the number had been reassigned) and is good cause to grant this waiver, *sua sponte*. The Commission therefore adopts a waiver, *sua sponte*, for a period of 12 months, to commence on the effective date of 47 CFR 64.1200(s) of the Commission's rules, specifically for accessing the RND to determine whether a number has been permanently disconnected since the date of the illegal text described in the Notification of Illegal Texts. Providers may access the RND for this purpose in the same manner as they would to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts.

Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM, published at 88 FR 21497, on April 11, 2023. The Federal Communications Commission

(Commission) sought written public comment on the proposals in the FNPRM, including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

30. *Need for, and Objectives of, the Second Report and Order.* The Second Report and Order continues the Commission's efforts to stop the growing tide of unwanted and illegal texts by building on the text blocking requirements from the first Text Blocking Order, 88 FR 21497 (April 11, 2023). While mobile wireless providers voluntarily block a significant number of unwanted and illegal texts, many of these harmful texts still reach consumers. The Second Report and Order requires terminating mobile wireless providers to block texts from a particular source following notification from the Commission; codifies that the National DNC Registry protections apply to text messages; encourages mobile service providers to make email-to-text an opt-in service; and revises the definition of prior express written consent making clear that consent must be to one seller at a time, and the seller must be logically and topically related to the content of the website on which consent is obtained.

31. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

32. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA, and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

33. The Chief Counsel did not file comments in response to the proposed rules in this proceeding; however, the Chief Counsel filed an *ex parte* letter on December 1, 2023. The SBA contends that small businesses have stated that the proposal to require sellers to obtain consent to call or text from one consumer at a time could increase costs significantly for small businesses that both buy and sell sales leads. The SBA did not offer any evidence to support this contention and did not address the benefit to consumers and to small businesses in having a reduction of unwanted calls and texts.

34. This rule makes it unequivocally clear that prior express written consent

under the TCPA must be to one seller at a time, but does not prevent small businesses from buying and selling leads or prevent small businesses from contact with consumers. The requirements for prior express written consent for the telemarketing calls covered by the TCPA will also protect business phones from the floods of unwanted prerecorded telemarketing calls. This is especially helpful for small business owners who are incentivized to answer all incoming calls because each call may be from a potential customer and they are unable to ignore calls from unfamiliar numbers. In addition, this requirement will help small businesses because it will provide legal certainty as to how callers and texters can demonstrate valid consent when that consent was obtained via a third party.

35. The Commission acknowledges that the decision to make unequivocally clear that prior express written consent under the TCPA must be one-to-one consent may raise costs for some businesses, including those that fall under the definition of small businesses, in that direct consent between a consumer and a seller requires more labor and administration than a blanket authorization for affiliated companies to contact an individual. However, the benefits of this policy, which accrue to millions of individuals and businesses, including small businesses, outweigh the costs to those businesses currently benefiting from multi-party "consent." Over time, it may be possible for technological solutions to lower the costs to businesses for seeking one-to-one prior express written consent and maintaining consent records. Any effort to create an exception for particular businesses, including small businesses, has the potential to undermine the effectiveness and intent of the policy, which is to provide consumers (including small businesses) the ability to determine when and how they are contacted in a transparent manner.

36. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2)

is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

37. Small Businesses, Small Organizations, Small Governmental Jurisdictions. The Commission's actions over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of "small governmental jurisdictions."

38. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have

spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

39. All Other Telecommunications. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

40. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities. The Second Report and Order includes new or modified reporting, recordkeeping, and compliance requirements for small and other entities. This includes requiring terminating mobile wireless providers to block texts from a particular number or numbers following notification from the Commission. Providers must promptly begin blocking the identified texts if illegal, and respond to the notice. If the

provider is unable to block further texts from that number because it has learned that the number has been reassigned the provider should promptly notify the Enforcement Bureau. If the provider determines at a later date that the number has been reassigned, it should notify the Enforcement Bureau, and cease blocking. Providers that fail to comply may be subject to enforcement penalties, including monetary forfeiture.

41. The Second Report and Order also codifies that the National DNC Registry protections apply to text messages, and encourages mobile service providers to make email-to-text an opt-in service. Additionally, it revises our definition of prior express written consent making clear that consent must be only to one single seller-caller from one single consumer at a time, and the seller must be logically and topically related to the content of the website on which consent is obtained. Small entities may comply with the Telephone Consumer Protection Act (TCPA) and contact consumers by obtaining consent from the consumer to one seller at a time. The Commission expects that small and other providers already taking significant measures to block illegal texts and will not find it burdensome to comply with these new obligations. Any such burdens would be far outweighed by the benefits to consumers from blocking text messages that are highly likely to be illegal.

42. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."

43. In the Second Report and Order, the Commission adopted text blocking rules modeled after the call blocking rules, but modified the new rules to account for the differences in the technology and delivery of text messages, and adopted requirements similar to those service providers were already familiar with to reduce any additional burdens. For example, a terminating provider will be required to block text messages only after it has received notice from the Commission's Enforcement Bureau. Second, text blockers are not required to block traffic "substantially similar" to the traffic the Enforcement Bureau identifies to avoid

blocking on content analysis, which could lead to over blocking. This modification will reduce concerns about liability for blocking incorrectly, as well as potential burdens if the Commission adopted a more expansive rule. The Commission found that commenters made general assertions, but offered no compelling evidence that they consistently block all traffic the Enforcement Bureau might identify.

44. In the Second Report and Order, the Commission also modified the prior express written consent requirement for TCPA consent to protect consumers while preserving the ability of comparison shopping websites to provide consumers with comparison shopping opportunities. This rule revision does not change the longstanding requirement that callers, including small businesses, must have consent from the called party, to comply with the TCPA. This modification makes it unequivocal that one-to-one consent is required under the Commission's TCPA consent rules. Such a requirement should not burden small entities that use lead generators to reach out to potential customers, because websites, including comparison shopping websites, can use a variety of means for collecting one-to-one consent for sellers to comply with the consent rule. For example, a website may offer a consumer a check box list that allows the consumer to specifically choose each individual seller that they wish to hear from or may offer the consumer a clickthrough link to a specific business so that the business itself may gather express written consent from the consumer directly. A website publisher could also reach out to a consumer for consent after the consumer has provided certain requested information and the site has subsequently selected a specific seller or sellers to contact the consumer.

45. The adopted modification does not prohibit comparison shopping websites from obtaining leads through valid consent and provides opportunities for such sites to obtain leads for potential callers (including small businesses) and texters. Further, this rule modification should help small businesses in reducing the number of unwanted and illegal calls and texts they receive, particularly if they cannot screen calls from unknown numbers. This rule modification best balances the needs of businesses, including small businesses, to utilize lead generation services to make calls to potential buyers with protecting consumers from a deluge of unwanted robocalls and roboteletexts. This will also help callers and texters, including small businesses, by providing legal certainty as to how to

meet their burden of proof when they have obtained consent via a third party. Further, callers and texters may avail themselves of other options for providing comparison shopping information to consumers, *e.g.*, manually dialed or non-prerecorded or artificial voice calls or texts, email, or information displayed directly on the third party website.

46. *Report to Congress.* The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

List of Subjects

47 CFR Part 0

Communications common carriers, Telecommunications.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 64 as follows:

PART 0—COMMISSION ORGANIZATION

Subpart A—Organization

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

■ 2. Effective March 26, 2024, amend § 0.111 by revising paragraph (a)(27) to read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(27) Identify suspected illegal calls and illegal texts and provide written notice to voice service or mobile wireless providers. The Enforcement Bureau shall:

(i) Identify with as much particularity as possible the suspected traffic or texts;

(ii) Cite the statutory or regulatory provisions the suspected traffic appear to violate or illegal texts violate;

(iii) Provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic or the

determination that the illegal texts are unlawful, including any relevant nonconfidential evidence from credible sources such as the industry traceback consortium or law enforcement agencies; and

(iv) Direct the voice service provider receiving the notice that it must comply with § 64.1200(n)(2) of the Commission's rules or direct the mobile wireless provider receiving the notice that it must comply with 47 CFR 64.1200(s).

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 3. Effective March 26, 2024, the authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

§ 64.1200 [Amended]

■ 4. Effective March 26, 2024, amend § 64.1200 in paragraph (e) by adding “or text messages” after the word “calls”.
■ 5. Effective July 24, 2024, further amend § 64.1200 by adding paragraph (s) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(s) A terminating mobile wireless provider must, upon receipt of a Notification of Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s), including, when required, blocking all texts from the identified number or numbers. The Enforcement Bureau will issue a Notification of Illegal Texts that identifies the number(s) used and the date(s) the texts were sent or received; provides the basis for the Enforcement Bureau's determination that the identified texts are unlawful; cites the statutory or regulatory provisions the identified texts violate; directs the provider receiving the notice that it must comply with this section; and provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Enforcement Bureau's Notification of Illegal Texts shall give the identified provider a reasonable amount of time to comply with the notice. The Enforcement Bureau shall make the Notification of

Illegal Texts available in EB Docket No. 23-418 at <https://www.fcc.gov/ecfs/search/search-filings>. The provider must include a certification that it is blocking all texts from the number or numbers and will continue to do so unless the provider learns that the number has been reassigned, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it shall notify the Enforcement Bureau and cease blocking. The provider is not required to monitor for number reassessments.

■ 6. Effective January 27, 2025, further amend § 64.1200 by revising paragraph (f)(9) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(f) * * *

(9) The term prior express written consent means an agreement, in writing, that bears the signature of the person called or texted that clearly and conspicuously authorizes no more than one identified seller to deliver or cause to be delivered to the person called or texted advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice. Calls and texts must be logically and topically associated with the interaction that prompted the consent and the agreement must identify the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

(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 or texts using an automatic telephone dialing system or an artificial or prerecorded voice; and

(B) The person is not required to sign the agreement (directly or indirectly) or agree to enter into such an agreement as a condition of purchasing any property, goods, or services. The term "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.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket Nos. 21-346, 15-80; ET Docket No. 04-35; FCC 23-71; FR ID 192559]

Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) addresses the Petition for Clarification and Partial Reconsideration (Petition) filed by the Cellular Telecommunications and Internet Association (CTIA) and the Competitive Carriers Association (CCA) (collectively, Petitioners) regarding the "Mandatory Disaster Response Initiative" (MDRI) by extending the compliance deadline. In its Order on Reconsideration, the Commission also agrees with the request to treat Roaming under Disaster arrangements (RuDs) as presumptively confidential when filed with the Commission.

DATES: The final rule is effective May 1, 2024.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Erika Olsen, Acting Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-2868 or via email at Erika.Olsen@fcc.gov or Logan Bennett, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-7790 or via email at Logan.Bennett@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, FCC 23-71, adopted September 14, 2023, and released September 15, 2023. The full text of this document is available by downloading the text from the Commission's website at: <https://docs.fcc.gov/public/attachments/FCC-23-71A1.pdf>.

Synopsis

I. Introduction

1. The *Report and Order* adopted the MDRI to improve network resilience during disasters, aligning with the industry-developed Wireless Network Resiliency Cooperative Framework. It mandated five provisions for facilities-based mobile wireless providers, including bi-lateral Roaming under Disaster arrangements (RuDs), mutual aid agreements, municipal preparedness, consumer readiness, and

public communication. In particular, the *Report and Order* requires that each facilities-based mobile wireless provider enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active. The Commission clarified that roaming is foreseeable, without limitation, when two providers' geographic coverage areas overlap. The Commission set a compliance date for the rules at the later of (i) 30 days after review of any new information collection requirements associated with the *Report and Order* by the Office of Management and Budget (OMB) or the Public Safety and Homeland Security Bureau (Bureau) determines that such review is not required, or (ii) March 30, 2023, for non-small providers and June 30, 2023, for small providers.

2. Petitioners jointly filed a Petition for Clarification and Partial Reconsideration (CTIA and CCA Petition or Petition) of the Commission's *Report and Order*. In response to the Petition, the Commission issued an Order on Reconsideration extending the compliance deadline, determining that RuD arrangements would be treated as presumptively confidential, and otherwise declining to modify the *Report and Order*.

A. Modification of Compliance Implementation Timeline

3. The CTIA and CCA Petition requests that the Commission "[p]rovide sufficient time for wireless providers—at least 12 months for non-small facilities-based mobile wireless providers and 18 months for small facilities-based mobile wireless providers—to achieve compliance with the new obligations." They further ask that those dates be calculated from the date of OMB approval of the rule for Paperwork Reduction Act (PRA) purposes. As described below, the *Order on Reconsideration* establishes a single date certain for compliance by all providers of May 1, 2024, that affords a reasonable extension by providing approximately 20 months for all providers from publication of the *Report and Order* in the **Federal Register** to achieve compliance. This will extend reasonable relief to providers, while preserving the benefits of the underlying rules for consumers relying on Petitioners' networks for connectivity and emergency communications access during disasters in advance of the 2024 hurricane and wildfire seasons. In doing so, the *Order on Reconsideration* also eliminates the need to continue to