

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
	)	
	)	
Advanced Methods to Target and Eliminate Unlawful Robocalls	)	CG Docket No. 17-59
	)	
	)	
Targeting and Eliminating Unlawful Text Messages	)	CG Docket No. 21-402
	)	

**REPLY IN SUPPORT OF EMERGENCY PETITION FOR COMMISSION TO  
CONSIDER STAY OF EFFECTIVE DATE OF ONE-TO-ONE RULE IN LIGHT OF  
EXECUTIVE ORDER**

Responsible Enterprises Against Consumer Harassment, MBC (“R.E.A.C.H.”), and its members, respectfully submit this Reply in support of its Petition<sup>1</sup> requesting the Commission take immediate action to stay the effective date of its new one-to-one rule (the “Rule”) based upon President Donald J. Trump’s Executive Order.

The stay of the FCC's one-to-one consent ruling,<sup>2</sup> effective January 27, 2025, is warranted based on the Executive Order<sup>3</sup> issued by President Trump on January 20, 2025, and the provisions

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<sup>1</sup> Petition filed by R.E.A.C.H., *In re Targeting and Eliminating Unlawful Text Messages Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket Nos. 21-402 & 02-278 (January 21, 2025).

<sup>2</sup> Federal Communications Commission, *Public Notice, DA 24-1154, Effective Date for One-to-One Consent Rule Set for January 27, 2025*, CG Docket Nos. 02-278, 21-402, 17-59 (Nov. 19, 2024), available at <https://www.fcc.gov> (last accessed Jan. 23, 2025).

<sup>3</sup> Exec. Order, *Regulatory Freeze Pending Review*, (Jan. 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/> (last accessed Jan. 20, 2025) (hereinafter “Regulatory Freeze Executive Order”).

of the Administrative Procedure Act (“APA”).<sup>4</sup> Contrary to the National Consumer and Privacy Groups’ contentions,<sup>5</sup> the request for a stay aligns with both executive authority and the APA’s legal framework. The request also ensures a fair and thorough review of the Rule, taking into consideration important issues that may affect small businesses, consumers, and broader market dynamics.

President Trump's Executive Order entitled "Regulatory Freeze Pending Review," mandates that all federal executive agencies "consider postponing for 60 days from the date of this memorandum the effective date for any rules that have been published in the Federal Register ... for the purpose of reviewing any questions of fact, law, and policy that the rules may raise."<sup>6</sup> The Order further instructs agencies to "consider opening a comment period" to allow interested parties to provide feedback on these issues and to reevaluate pending petitions.<sup>7</sup>

Given that the FCC’s one-to-one consent ruling was published in the Federal Register and has not yet taken effect, the Executive Order provides a clear basis for delaying its implementation.<sup>8</sup> The President’s directive aims to ensure that any regulatory changes from the previous administration are subject to review, which is precisely what R.E.A.C.H. requests: a delay

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<sup>4</sup> Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706 (1946).

<sup>5</sup> Comments by National Consumer and Privacy Groups in Response to Petition to Stay Effective date of One-to-One Rule, Jan. 22, 2025 (hereinafter “NCPC Opposition”).

<sup>6</sup> Regulatory Freeze Executive Order, Jan. 20, 2025.

<sup>7</sup> *Id.*

<sup>8</sup> See e.g., FCC, *Chairman Carr Ends FCC’s Promotion of DEI*, Jan. 21, 2025. <https://docs.fcc.gov/public/attachments/DOC-409054A1.pdf> (In response to President Trump's January 20, 2025 Executive Order, FCC Chairman Brendan Carr announced that the agency will end its promotion of Diversity, Equity, and Inclusion (DEI) initiatives, refocusing on fulfilling the Commission's statutory mission without engaging in discrimination); *Implementation of Executive Order on Access to Affordable Life-Saving Medications*, 86 Fed. Reg. 7059, 7059 (Jan. 26, 2021) (“In accordance with the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, ... this action temporarily delays for 60 days from the date of the memorandum the effective date of the final rule titled ‘Implementation of Executive Order on Access to Affordable Life-saving Medications,’ published in the December 23, 2020, Federal Register.”)

of the Rule’s effective date until March 18, 2025, with a reopening of the comment period to consider the potential effects, legal questions, and policy concerns raised by the Rule.

While the Executive Order provides a sufficient basis to stay the one-to-one consent ruling, the APA also permits a federal agency to issue a stay or delay of a final rule after completing full rulemaking procedures.<sup>9</sup> As a federal agency, the FCC has the authority to delay the effective date of the Rule and initiate a review of the issues raised by the it in accordance with this Executive Order.<sup>10</sup> As currently structured, the Rule could disproportionately burden small businesses, further straining their economic position in the marketplace. A delay would provide an opportunity to more thoroughly assess its potential effects on these businesses.

Notably, the Online Lenders Alliance (“OLA”) filed a petition requesting a stay on the Rule’s implementation, arguing that the proposed Rule threatens to marginalize small businesses that rely on online lead generation will thereby significantly impact both businesses and consumers.<sup>11</sup> In its petition, the OLA argues that by enforcing one-to-one consents, the FCC inadvertently favors larger lead generators and lenders which are better equipped to absorb the increased costs of generating and acquiring leads.<sup>12</sup> This enables larger corporations to dominate

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<sup>9</sup> 5 U.S.C. §§ 551-559, 701-706; *see Nat. Res. Def. Council v. Perry*, 940 F.3d 1072, 1077 (9th Cir. 2018) (“[O]rdinarily, agencies are free to withdraw a proposed rule before it has been published in the Federal Register, even if the rule has received final agency approval.”); *Chen v. INS*, 95 F.3d 801, 805 (9th Cir. 1996) (“[O]n its own terms, th[e] rule was to become effective only on the date of publication in the Federal Register. In accordance with President Clinton’s directive, this rule was withdrawn from publication. It was never subsequently published; therefore, it has no legal effect and is not binding on this court.”).

<sup>10</sup> NCPC’s Opposition does not cite any authority to suggest that an executive order is not sufficient to support a stay or delay of a final rule or good cause as required by the APA exceptions at 5 U.S.C. §§553(d)(3).

<sup>11</sup> Online Lenders Alliance, Petition for Rulemaking, CG Docket Nos. 02-278 & 21-402 (FCC filed Jan. 13, 2025).

<sup>12</sup> *Id.* at 8.

search engine optimization (“SEO”) visibility, leaving smaller companies—often with limited or no marketing budgets—facing a substantial loss of traffic.<sup>13</sup>

R.E.A.C.H. specifically proposed a revision to the CFR to clarify that consumers should only be contacted by one “entity” rather than multiple “sellers.”<sup>14</sup> R.E.A.C.H. also suggested that the FCC should allow sellers to offer similar products or services that align with the consumer’s needs, especially when the consumer does not qualify for the specific offer that led them to the website. Indeed, the Rule’s impact on both consumers and businesses warrants a more comprehensive review. By reopening the comment period, stakeholders can offer feedback on how the Rule can be adjusted to better serve the public interest, ensuring it does not unintentionally harm smaller market participants or consumers.

Delaying the effective date of the Rule aligns with the public interest, as it allows time for a more comprehensive evaluation of the legal, factual, and policy issues raised by it. A delay and reopening of the comment period would allow stakeholders to examine whether the Rule, as written, might lead to *unintended* consequences for consumers and businesses alike. The significant economic consequences that could be faced by small businesses, coupled with the possible confusion or harm to consumers, underscore the importance of reviewing and refining the Rule before it takes effect.

In light of President Trump’s Executive Order and the APA’s legal landscape, a stay of the effective date of the one-to-one consent ruling is warranted. The FCC, in exercising its authority, should stay the effective date of this Rule until March 18, 2025, thereby allowing stakeholders to review the impacts of the Rule, address concerns about small business competition, and submit

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<sup>13</sup> *Id.*

<sup>14</sup> Comment of Responsible Enterprises Against Consumer Harassment, CG Dockets Nos. 21-402, 02-278, (February 26, 2024).

comments. This process will ensure that the final Rule optimally balances consumer protection with the economic realities faced by small businesses, thereby serving the public interest.

Respectfully submitted,

R.E.A.C.H.

By: /s/ Eric J. Troutman

Eric J. Troutman  
R.E.A.C.H. President  
January 23, 2025