

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Rules and Regulations Implementing the ) CG Docket No. 02-278  
Telephone Consumer Protection Act of 1991 )

**COMMENTS OF THE MOBILE ECOSYSTEM FORUM**

The Mobile Ecosystem Forum (“MEF”) hereby files its comments in response to the Federal Communications Commission’s (“FCC’s” or “Commission’s”) June 9, 2023, Notice of Proposed Rulemaking (“NPRM”) in the above-referenced proceeding.

**I. INTRODUCTION AND SUMMARY**

The MEF is a global trade association focused on growing and developing mobile engagement with consumers using applications, software, and communications. MEF members are innovative companies whose products power mobile services, including messaging, content, and Internet of Things (“IoT”). MEF members collaborate to develop and support best practices, codes of conduct, and anti-fraud schemes in support of a mobile ecosystem the benefits consumers, Mobile Network Operators, and other businesses seeking positive community engagement through mobile services. International in scope, MEF has members in 45 countries, including the United States, and MEF strives to offer a uniquely international view on matters impacting its members and the mobile ecosystem writ large, including by filings these comments in response to the NPRM.

At the outset, MEF commends the FCC’s efforts to “clarify and strengthen consumers’ ability to revoke consent to receive both robocall and robotexts” and to “honor such request in a

timely manner.”<sup>1</sup> The Commission’s NPRM seeks comment on its proposals to: (1) ensure that revocation of consent does not require the use of specific words or burdensome methods; (2) require that callers honor do-not-call and consent revocation requests within 24 hours of receipt; (3) codify its previous decision that consumers only need to revoke consent once to stop getting all robocalls and robotexts from a specific entity; and (4) allow wireless consumers the option to stop robocalls and robotexts from their own wireless service provider.<sup>2</sup>

MEF supports the Commission’s efforts and stated goals. As set forth below, MEF recommends that the Commission modify its proposals regarding (1) consumer opt-out methods and (2) the content of confirmatory opt-out messages. Regarding opt-out, the Commission should establish a strong presumption in favor of “STOP” and other specifically defined and well understood terms signifying a consumer opt-out. As for confirmatory opt-out messages, the Commission should enable companies to include language to “save” a customer relationship, so long as the content is truthful and requires no additional action from the consumer to complete the opt-out. For example, a business should, as part of the confirmatory opt-out, be able to thank the customer for their time and attention and show an openness to continue the conversation should the customer change their mind. Finally, MEF supports a 24-hour standard for recognizing text-based opt-outs, but submits that other opt-out methods for text messaging programs (e.g., a voice call) should be given a reasonable length of time to take effect, not less than 30 days.

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<sup>1</sup> NPRM at ¶8.

<sup>2</sup> *Id.*

## II. DISCUSSION

As noted above, MEF proposes narrow modifications to certain the Commission’s proposals in the NPRM. By adopting the recommendation of the MEF, the Commission would add certainty to the industry and enable consumers to benefit from maintaining mobile engagement with message initiators of the consumer’s choosing. Each of the MEF’s three proposals are described in detail in the paragraphs that follow.

### A. The FCC Should Adopt Specific Opt-Out Key Words.

In the NPRM, the FCC notes that since 2015 consumers have been able to “revoke” consent “through any reasonable means.”<sup>3</sup> The Commission further states that consumers should be able to revoke consent through replying to a text message with “using words such as ‘stop,’ ‘revoke,’ ‘end,’ or ‘opt out,’ and that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method.”<sup>4</sup>

MEF supports the Commission’s list of opt-out key words, and further welcomes any reasonable expansion of that list for consumers to use to signify an opt-out. By establishing a list of key words for opt-outs, the FCC would set forth an objective standard for opt-outs that service providers can specifically enact and rely on. “STOP,” for example, is well-established and understood by providers and consumers, and very much has become the consumer and industry standard at least since the Commission adopted the 2015 rules. Other words and phrases identified by the Commission, such as “revoke,” “end,” and “opt out,” are similarly clear, objective, and implementable. MEF also agrees that this list could be expanded effectively, so long as providers and consumers have an easy ability to identify recognized opt-out words.

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<sup>3</sup> *Id.* at ¶ 9.

<sup>4</sup> *Id.*

Short of such a list, consumer use of unclear or subjective phrases could limit the effectiveness of opt-outs, cause consumer confusion, and potentially encourage class action litigation. For example, if a consumer were to reply “STAP” to a text message, a service provider could be unsure of the consumer’s intention. Similarly, a phrase like “alleviate me from these messages” would be difficult to interpret and implement. Such a result may seem unlikely, but MEF notes that many service providers have been subject of TCPA and similar lawsuits as a result of non-standard or otherwise unusual consumer replies to a text message. The ease of filing a putative class action lawsuit along with statutory damages (of \$500-\$1500 per message), creates a litigation arbitrage opportunity the FCC should avoid encouraging. These difficulties, inadvertent or intentional, could be mitigated, or perhaps altogether avoided, by Commission adoption of a prescribed list of opt-out key words.

In cases where a text message initiator provides for opt-out by reply text, the Commission should clarify that the initiator need not maintain any other form of opt-out.<sup>5</sup> In other instances where an initiator does not provide for opt-out by reply text, MEF agrees with the Commission that the initiator should be required to “clearly and conspicuously provide[] alternative ways for a consumer to revoke consent.”<sup>6</sup>

MEF supports easy consumer ability to opt-out of text messaging through a reply message or other easy-to-use means where an initiator lacks the ability to receive text messages. MEF reiterates that the Commission should adopt a set of clear key words for consumers and

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<sup>5</sup> *Id.* at ¶ 10.

<sup>6</sup> *Id.*

initiators to ensure consumer requests are honored and to avoid miscommunications and potential litigation that can and has resulted from ambiguous consumer reply messages.

**B. The Commission Should Permit Providers To Include “Save” Opportunities In Confirmatory Opt-out Messages.**

In the NPRM, the Commission proposes “to codify” that “a one-time text message confirming a consumer’s” opt-out from text messaging “does not violate the TCPA or the Commission’s rules as long as the confirmation text merely confirms the called party’s opt-out request and does not include any marketing or promotional information.”<sup>7</sup> MEF supports the use of the well-established confirmatory opt-out method, but submits that the FCC should permit initiators to include language to maintain the text message relationship, so long as the message initiator: (1) provides truthful information and (2) does not further text the consumer unless the consumer affirmatively seeks to continue the texting relationship.

The Commission has worked to treat text messaging and traditional voice calling as consistently as possible given the differences in the communications modes. In the voice context, it is common, and indeed expected, that business will offer consumers incentives or other benefits in the hope of preserving the relationship between the calling business and the called consumer. The same is true of text message initiators. Business may very well seek to provide consumers incentives to maintain a text message relationship, and consumers should have the ability to benefit from such opportunities. As just one of many possible examples, a business could send a consenting consumer a text message reminding the consumer of items in their online “shopping cart.” In response to an opt-out reply, a business would confirm the opt-out and could offer a consumer a discount on those shopping cart items if the consumer continues in

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<sup>7</sup> *Id.* at ¶ 16.

the text message program. Consumers should be able to benefit from such potential savings opportunities that innovative companies may offer. Of course, a consumer need not respond. And absent an affirmative response, the consumer's opt-out should take effect in accordance with the Commission's prescribed timelines.

The Commission has acknowledged and proposes to adopt the ability of text initiators to seek clarifications from consumers when they may be engaged in multiple lines of text message communications.<sup>8</sup> MEF's proposal to enable text message initiators to preserve their relationship with consumers through an incentive that clarifies the value the initiator places on its text message program should similarly be available to consumer and initiators. The initiator would be responsible for the truthfulness and accuracy of any such message, and the consumer's opt-out would take effect in accordance with the Commission's other rules. As a result, consumers would have an opportunity to benefit from incentives contained in a confirmatory opt-out message, but would suffer no diminishment in their ability to opt-out of messages in a timely basis, as set forth in the standard opt-out rules.

**C. The Commission Should Enforce Honoring Do-Not-Call And Consent Revocation Requests Within 24 hours Of Receipt Only On Requests Originated Via Text Message.**

The MEF endorses requiring initiators to honor opt-out requests within 24 hours of such request when the consumer request comes via text message. In fact, most state-of-art text messaging platforms, many of whom are MEF members, enforce this in real-time. However, expanding the requirement to other means, say a phone call or a letter would not serve the customer and would make it unduly burdensome to the business. For example, if a consenting consumer calls into the phone number at the back of a product label to opt-out of a text they got

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

from the brand (after having opted in), the consumer is relying on a centralized call center, rather than on the text messaging system that generated the request. In such a circumstance, which should be rare, text initiators should have a reasonable period of time, not less than thirty days, to process such requests.

Text messaging systems are designed to handle consumer opt-out requests, and consumers that engage in text messaging understand how to opt-out of text messages. Non-text method are unlikely to be utilized by consumers, and similarly have not been designed to handle these kinds of requests. Call centers that receive inbound voice calls typically are not integrated with text messaging systems, and will need substantially more than 24 hours to route and implement such non-standard opt-outs.

For these reasons, the MEF endorses the FCC requirement to have 24 hours to honor text-based revocation of consent. When a consumer uses a non-text message means of opt-out, businesses should have a reasonable period of time, not less than 30 days, to process the opt-out.

### **III. CONCLUSION**

Any Commission rules adopted in response to the NPRM should be consistent with the foregoing MEF proposals.

Respectfully submitted,

/s/

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