

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementing Section 503 of RAY BAUM’S Act)	WC Docket No. 18-335
)	
Rules and Regulation Implementing the Truth in Caller ID Act of 2009)	WC Docket No. 11-39
)	

**REPLY COMMENTS OF
EZ TEXTING a/k/a CALLFIRE, INC.**

EZ Texting, also known as Callfire, Inc. (“EZ Texting”), submits these reply comments to express its support for the Notice of Proposed Rulemaking (“*NPRM*”) released on February 15, 2019 in the above-captioned proceedings. In Section 503 of RAY BAUM’S Act,¹ which amended the Truth in Caller ID Act of 2009,² Congress recognized the harmful effects of fraudulent spoofing activity on American consumers. EZ Texting enthusiastically supports Congress’s and the Commission’s efforts to reduce harmful robocalls relying on spoofed caller identification (“ID”) information, and the NPRM in this proceeding is another important step toward combating this harmful practice.

EZ Texting urges the Commission to issue regulations that mirror the narrow changes RAY BAUM’S Act made to the Truth in Caller ID Act. In the NPRM, the Commission correctly proposes to issue regulations that are consistent with Congress’s unambiguous intent to focus only on harmful spoofing done with the “*intent to defraud, cause harm, or wrongfully obtain anything*

¹ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. P, Title V, § 503, 132 Stat. 348, 1091–94 (2018) (codified as amended in 47 U.S.C. § 227(e)) (“RAY BAUM’S Act”).

² Truth in Caller ID Act of 2009, Pub. L. No. 111-331, 124 Stat. 3572, 3572 (2010) (“Truth in Caller ID Act”).

of value,” while allowing legitimate caller ID alterations to remain lawful.³ EZ Texting further encourages the Commission to adopt definitions of statutory terms that track RAY BAUM’S Act’s plain text in order to avoid expanding the application of the statute beyond its intended scope or contradicting Congress’s unambiguous expressed intent.

I. EZ TEXTING SHARES THE COMMISSION’S INTEREST IN MAINTAINING A RELIABLE MESSAGING ECOSYSTEM

EZ Texting is a leader in the field of voice and messaging services, and it supports the Commission’s commitment to protecting consumers from illegal and unwanted robotexts and robocalls. EZ Texting provides user-friendly, intuitive voice and text connectivity products to over 160,000 businesses worldwide.⁴ EZ Texting helps all kinds of businesses—from the neighborhood laundromat to national political campaigns—reach their customers through voice or text.

Through EZ Texting’s suite of cloud telephony products, EZ Texting’s customers are able to reach millions of American consumers. With EZ Texting’s text messaging tool, businesses can promote their events or promotions to their customers instantly via text.⁵ With EZ Texting’s voice messaging applications, businesses can talk to their customers about these promotions and events via live voice.⁶ And with EZ Texting’s Interactive Voice Response System (“IVR”), EZ Texting

³ *NPRM*, Appendix A at 15 (emphasis added).

⁴ See EZ Texting, About Us, *available at* <https://www.eztexting.com/about-us> (last visited Apr. 30, 2019).

⁵ See CallFire, Text Messaging, *available at* <https://www.callfire.com/products/text-messaging> (last visited Apr. 30, 2019).

⁶ See CallFire, Voice Broadcast, *available at* <https://www.callfire.com/products/voice-broadcast> (last visited Apr. 30, 2019).

helps businesses interact with their customers in real-time.⁷ For example, political organizations use EZ Texting’s IVR to conduct phone surveys of thousands of potential voters, while leading retailers use EZ Texting’s IVR to obtain customer feedback after a customer purchases a product.⁸ From businesses with just a handful of customers to businesses with millions of customers, EZ Texting enables its users to transmit necessary information to their customers, while saving them time and money.

Given EZ Texting’s commitment to providing its customers with reliable communications services, it applauds the Commission’s initiative in safeguarding messaging platforms from robotexters who wish to send unwanted, malicious, and unlawful mobile messages. It is essential that wireless text messaging services remain a trusted medium of communication for American consumers, and EZ Texting therefore fully supports the Commission’s decision to enforce its rules aggressively, within and outside the United States.⁹

II. THE PROPOSED RULES ARE APPROPRIATELY TAILORED TO TARGET ILLEGITIMATE SPOOFING WHILE LEAVING LEGITIMATE CALLER ID MODIFICATION INTACT

EZ Texting supports the Commission’s decision to combat malicious caller ID spoofing while continuing to permit the kinds of legitimate caller ID modification that serve consumers and businesses. The Truth in Caller ID Act made it unlawful to “knowingly transmit misleading or inaccurate caller identification information *with the intent to defraud, cause harm, or wrongfully*

⁷ See CallFire, IVR, *available at* <https://www.callfire.com/products/ivr> (last visited Apr. 30, 2019).

⁸ *See id.*

⁹ See *NPRM* ¶11 (“[W]e propose to extend the reach of our caller ID spoofing rules to include communications originating from outside the United States to recipients within the United States.”).

obtain anything of value.”¹⁰ As the Commission noted in its 2011 Order implementing the Truth in Caller ID Act, “Congress intended to balance carefully the drawbacks of malicious caller ID spoofing against the benefits provided by legitimate caller ID spoofing.”¹¹ Indeed, as Congress has recognized, “there are some legitimate reasons why calling parties may wish to alter their caller ID information.”¹²

As the Commission correctly recognized in this *NPRM*, consumers and businesses alike benefit from many forms of legitimate reasons for altering caller ID.¹³ For example, domestic violence shelters may need to alter their caller ID information to ensure the safety of domestic violence victims.¹⁴ Ridesharing services also frequently utilize a temporary phone number to facilitate communication between drivers and passengers, while protecting drivers and passengers from further contact after the ride has finished.¹⁵ The ability to alter caller ID information thus has numerous uses that protect consumers’ privacy and safety, while allowing businesses to communicate with their customers efficiently.

¹⁰ 47 U.S.C. § 227(e)(1) (emphasis added).

¹¹ *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, 26 FCC Rcd. 9114, 9130 (2011). The Commission also recognized this careful balance in its 2011 report to Congress. See *Caller Identification Information in Successor or Replacement Technologies*, 26 FCC Rcd. 8643, 8658 ¶ 32 (2011) (“2011 Report to Congress”).

¹² *NPRM* ¶ 4; see also *Truth in Caller ID Act, Report of the S. Comm. on Commerce, Sci., & Transp. on S. 30*, S. Rep. No. 111-96, at 2 (2009) (“2009 Senate Commerce Committee Report”), available at <https://www.congress.gov/111/crpt/srpt96/CRPT-111srpt96.pdf> (“Although there are many more examples of harmful uses of ID spoofing, it is important to recognize that there are some more benign uses of this technology. . . . As a result, efforts to curtail ID spoofing should focus on actions by persons with intent to deceive or cause harm.”).

¹³ *NPRM* ¶ 4.

¹⁴ See *2009 Senate Commerce Committee Report* at 2.

¹⁵ See *id.*

In light of these many legitimate uses of caller ID alteration, and Congress’s clear directive to preserve such legitimate use cases, the Commission is correct to target only those actors who spoof caller ID information “with the intent to defraud, cause harm, or wrongfully obtain anything of value.”¹⁶ The Commission’s proposed approach appropriately targets malicious actors, while allowing beneficial uses of caller ID alteration to continue benefiting consumers and the businesses that serve them.

III. EZ TEXTING AGREES WITH THE COMMISSION THAT THE TEXT OF THE STATUTE IS CLEAR, AND THE COMMISSION SHOULD THUS AVOID ISSUING IMPLEMENTING REGULATIONS THAT CONTRADICT CONGRESS’S UNAMBIGUOUSLY EXPRESSED INTENT

EZ Texting supports the Commission’s proposal to issue rules implementing RAY BAUM’S Act in a manner consistent with the text of the statute. EZ Texting fully agrees with the Commission’s statement that “the statutory language is clear,”¹⁷ and it therefore encourages the Commission to issue regulations that neither contradict nor expand the unambiguous statutory text. In particular, the Commission’s proposed definitions of the terms “text message,” “text messaging service,”¹⁸ “voice service,” “caller identification information,” and “caller identification service” appropriately track the statutory language, and the Commission should not stray from that language.¹⁹

¹⁶ *NPRM*, Appendix A at 15.

¹⁷ *Id.* ¶ 12.

¹⁸ EZ Texting especially agrees with the Commission that “[m]aintaining consistency with the statutory definition of ‘text messaging service’ for unlawful spoofing prevention is particularly important given that it is only text messages ‘sent using a text messaging service’ that Congress includes within the scope of section 227(e) as amended.” *Id.* ¶ 25.

¹⁹ *See generally id.* ¶¶ 15–38.

Given the unambiguous language Congress used in defining these terms—and the exacting standard of judicial scrutiny applied to agency applications of unambiguous statutory text—EZ Texting encourages the Commission to be wary of any modifications to the statutory definitions that would contradict or expand the meaning of the statute. Under *Chevron*, where “Congress has directly spoken to the precise question at issue,” the Commission lacks the discretion to interpret Congress’s language and must instead “give effect to the unambiguously expressed intent of Congress.”²⁰ Here, the plain text of RAY BAUM’S Act provides simple definitions using well-understood industry terms. The statutory text is thus unambiguous with respect to the definitions of these five terms, and the Commission should adopt these definitions without modification or amendment.²¹

For example, the Commission has questioned whether it should include “Rich Communication Services (RCS), an IP-based asynchronous messaging protocol,” in the definition of “text message.” EZ Texting respectfully urges the Commission not to include RCS in the definition of that term. As a matter of statutory construction, the canon *expressio unius est exclusio alterius* counsels against including RCS in the definition of “text message.” Congress explicitly stated that that the term “text message” includes SMS messages and MMS messages.²² Given that

²⁰ *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984); see also *Kingdomware Techs., Inc. v. United States*, 136 S.Ct. 1969, 1976 (2016) (“[W]e begin with the language of the statute. . . . If the . . . language is unambiguous and the statutory scheme is coherent and consistent . . . the inquiry ceases.”).

²¹ See *Nat’l Env’tl. Dev. Assoc.’s Clean Air Project v. Env’tl. Prot. Agency*, 891 F.3d 1041, 1048 (D.C. Cir. 2018) (“In order to resolve the dispute at *Chevron* step one, we must determine whether the intent of Congress is clear, meaning that the statutory provision at issue is unambiguous with respect to the question presented. This requires that the governing statute, read as a whole, reveal a clear congressional intent regarding the relevant question, or that the text of the statute and reasonable inferences from it give a clear answer.” (internal quotation marks, citations, and alterations omitted)).

²² RAY BAUM’S Act § 503(a)(2)(C), 132 Stat. at 1092.

SMS, MMS, and RCS are members of an associated group or series—namely, messaging protocols—the *expressio unius* canon commands the inference that Congress excluded RCS by deliberate choice, not mere inadvertence.²³ Reserving RCS from the definition of “text message” would also be consistent with the Commission’s treatment of other non-traditional messaging applications, such as WhatsApp and iMessage. Mindful of the strict standard of judicial review applied to an agency’s implementation of unambiguous statutes, EZ Texting encourages the Commission to remain faithful to Congress’s explicit decision to exclude RCS from the definition of “text message.”

IV. CONCLUSION

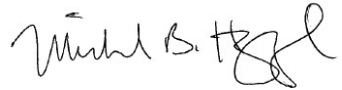
EZ Texting appreciates the Commission’s decision to prioritize the problem of fraudulent spoofed robocalls, and it supports the Commission’s efforts to target these robocalls and malicious caller ID spoofing. The Commission is correct to conclude that the “statutory language is clear,”²⁴ and thus EZ Texting encourages the Commission to hew closely to the text of the statute in issuing its implementing rules.

²³ See E. Crawford, *Construction of Statutes* 337 (1940) (“[*Expressio unius*] properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference.” (internal quotation marks omitted)).

²⁴ *NPRM* ¶ 12.

Respectfully submitted,

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