

**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)
)

To The Commission:

Petition for Clarification of The P2P Alliance

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I. Introduction and Background

Peer-to-peer (“P2P”) text messaging is a relatively new communications technology that allows organizations to communicate with their students, employees, supporters, and customers through individual, personalized text messages. Individuals working or volunteering for these organizations use either an online platform or a mobile application to send Short Message Service (“SMS”) or Multimedia Messaging Service (“MMS”) messages to recipients to convey relevant information and initiate meaningful two-way communication.

Universities, nonprofits, and businesses use P2P text messaging to communicate with individuals with whom they already have a relationship. Political campaigns, political committees, and their supporters use P2P texting to share information with voters, activists, and donors. For example, during the 2016 Democratic Presidential primary, the Bernie Sanders campaign used P2P texting to connect with voters and encourage supporters to attend rallies with the candidate.

Use of P2P text messaging has grown tremendously over the past several years, and the platform is used by a variety of organizations from a range of sectors. Colleges and universities use P2P texting to connect with students and alumni to discuss class registration and alumni activities. For example, Milwaukee Area Technical College uses P2P texting to facilitate a smooth class registration process, as well as to remind students of deadlines and student loan requirements. Job recruiters use P2P texting to connect with potential applicants and discuss relevant job listings. Nonprofit organizations use P2P texting to interact with their members, whether by sharing information or encouraging attendance at events.

Organizations utilizing P2P texting have the ability to develop targeted message scripts that may be used to communicate with recipients. Staff members or volunteers for these

organizations are presented with these message scripts when they access a P2P platform. Conducting each conversation one at a time, these individuals may choose to send messages that follow the scripts, edit them, or personalize each message.

No matter which option the sender selects, each and every message transmitted using a P2P platform must be individually sent from a single sender to a single recipient; P2P texting does not allow the simultaneous or sequential transmittal of messages to a list of recipients. Rather, sending a message through a P2P platform requires a person to manually send each individual message to each individual recipient.

Individual senders have the ability to view responses from recipients and reply accordingly, whether by message script or by typing an individualized response. P2P messages cannot be sent without human intervention, and any P2P message, whether containing a script or a uniquely tailored message, requires an affirmative human action. By ensuring that each message is individually sent to a single recipient, P2P texting facilitates the types of conversations the Federal Communications Commission (“Commission”) has sought to permit, rather than restrict, in its implementation of the Telephone Consumer Protection Act (“TCPA”).¹

The P2P Alliance is a coalition of providers and users of P2P texting services. It includes the P2P providers that serve campaigns and entities from both major political parties as well as non-political entities. The P2P Alliance also includes organizations representing the wide range of users of P2P texting services, from commercial entities to nonprofit charities.

As set forth below, and pursuant to Section 1.2 of the Commission’s rules, the P2P Alliance hereby respectfully requests that the Commission clarify that P2P text messaging is not

¹ 47 U.S.C. § 227.

subject to the TCPA’s restrictions on calls to mobile phone numbers.² In support of this request, the P2P Alliance submits, as a preliminary matter, that P2P text messaging does not involve the use of equipment that constitutes an automatic telephone dialing system (“autodialer”) as such term is defined by the TCPA, nor are P2P messages made using an autodialer. Next, P2P text messages pertaining to non-political matters involve communications between two parties with a previous relationship, and the recipient has indicated his or her consent to receive such messages by providing a contact number to which such messages are delivered. Finally, P2P text messages of a political nature are manually dialed by an individual and do include not “telephone solicitations” as defined by the TCPA. Thus, P2P messages are the types of communications consumers want and expect, and are delivered in a manner Congress did not intend to subject to the TCPA’s restrictions on calls to mobile phone numbers.

II. P2P Text Messaging Does Not Involve Equipment that Constitutes an Autodialer, Nor Are P2P Messages Transmitted Using an Autodialer

As discussed in Section I above, a P2P text messaging platform does not allow a sender to transmit a message without human intervention; the platform does not facilitate the automated initiation of messages. Fundamentally, P2P texting does not include equipment that constitutes an autodialer. The TCPA defines an autodialer as equipment which has the capacity “(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.”³ The Commission has further interpreted this definition to mean equipment with “the capacity to dial numbers without human intervention.”⁴ The U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) recently reaffirmed the Commission’s interpretation: “That makes sense given that ‘auto’ in autodialer—or,

² 47 U.S.C. § 227 (b)(1)(A).

³ 47 U.S.C. § 227 (a)(1).

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, 30 FCC Rcd 7961, 7975, ¶ 14 (2015) (“2015 Order”).

equivalently, ‘automatic’ in ‘automatic telephone dialing system,’ 47 U.S.C. § 227(a)(1)—would seem to envision non-manual dialing of telephone numbers.”⁵

A P2P platform requires a person to actively and affirmatively manually dial each recipient’s number and transmit each message one at a time; the equipment does not permit the “automatic” transmittal of messages. P2P texting is entirely dependent on human intervention, and P2P text messages cannot be transmitted without affirmative human action. Conversely, a P2P texting platform does not include “the capacity ... to store or produce telephone numbers to be called, using a random or sequential number generator.”

Further, to fall under the TCPA’s restrictions regarding calls to mobile phone numbers, the equipment must not only constitute an autodialer, but the call must be “made” using an autodialer.”⁶ Because a person utilizing the P2P platform to send a P2P message does not “make” a call using an autodialer, and, instead, sends such messages manually, such messages are not subject to the TCPA’s restrictions on calls to mobile phone numbers. By definition, a manually dialed call cannot be actively utilizing a random or sequential number generator because the numbers are generated directly by the person dialing the number.

Thus, P2P text messaging is not subject to the TCPA’s restrictions on calls to mobile phone numbers for both of these reasons. P2P text messaging equipment does not constitute an autodialer, and the transmittal of a P2P text message is not “made” in a manner restricted by Section 227(b)(1)(A).

III. P2P Text Messages Sent For Non-Political Purposes Are the Types of Communications Consumers Want and Expect

As noted earlier, a P2P text message platform allows for groundbreaking new methods of two-way communications between consumers and universities, non-profit organizations, and

⁵ *ACA International v. FCC*, No. 15-1211, slip op. at 28 (D.C. Cir. Mar. 16, 2018) (“ACA”).

⁶ *See* 47 U.S.C. § 227(b)(1)(A).

other non-political entities. These text-message communications are precisely the type that Congress intended the TCPA to permit and encourage: communications between a sender and a recipient with a previous relationship, and the recipient has indicated his or her consent to receive such messages by providing a contact number to which P2P messages are delivered.

The Commission has made clear that the TCPA is not intended to “inhibit communications that customers may want.”⁷ The Commission has also concluded that “Congress did not expect the TCPA to be a barrier to normal, expected, and desired business communications.”⁸ Private and nonprofit entities use P2P text messaging to conduct routine communications with those persons that have consented to receive such communications, including customers, clients, and donors.

For example, recruiters use P2P texting to discuss the details of new job openings with potential applicants. Universities use P2P texting to allow guidance counselors to communicate about registration issues with students, and to allow admissions officers to communicate about upcoming deadlines with potential applicants.

Personal shoppers may use P2P texting to discuss new lines of clothing with customers and clients. Similarly, nonprofit organizations may use P2P texting to increase attendance at events, to ask members to sign petitions, or to contact past donors to encourage them to participate in an annual fundraising campaign.

Since Congress enacted the TCPA in 1991, the Commission has repeatedly confirmed that “persons who knowingly release their phone number have in effect given their invitation or

⁷ *GroupMe, Inc./Skype Communications S.A.R.L.*, Declaratory Ruling, CG Docket No. 02-278, 29 FCC Rcd 3442, ¶ 1 (2014).

⁸ *Id.* at ¶ 8.

permission to be called at the number which they have given.”⁹ Private businesses and non-profits employ P2P text messaging to contact individuals who have previously given the organizations their phone numbers, and thereby consented to receive such messages.

Accordingly, P2P text messaging pertaining to non-political purposes are sent only after a prior relationship and prior consent exist. These are exactly the types of communications that the Commission has long sought not to inhibit, especially when such calls require human intervention.

IV. The Commission Has Explicitly Determined That Manually Dialed Texts for Political Purposes Are Not Subject to the TCPA’s Restrictions on Calls to Mobile Phone Numbers, Nor Are Such Texts Telephone Solicitations

P2P texting is increasingly used by political campaigns, political parties, and other organizations with an interest in political campaigns. As discussed in Section II above, P2P texting for these purposes does not involve equipment that constitutes an autodialer or the use of an autodialer to deliver such texts, as such texts are manually delivered from a single sender to a single recipient. In a 2016, the Commission recognized “manually placed text messages are permissible without prior express consent.”¹⁰

In addition, P2P text messages for political purposes do not include “telephone solicitations,” as that term is defined in the TCPA and has been clarified by the Commission. The TCPA defines a “telephone solicitation” as:

the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that

⁹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 92-443, 7 FCC Rcd. 8752, 8769, ¶ 31 (1992) (“1992 Order”); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*; *Request of ACA International for Clarification and Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 23 FCC Rcd 559, 566, ¶ 9 (2008); 2015 Order at ¶ 49.

¹⁰ *Telephone Consumer Protection Act Robocall and Text Rules: Biennial Reminder for Political Campaigns About Robocalls and Text Abuse*, Enforcement Advisory No. 2016-03, (rel. Mar. 14, 2016) (“2016 Political Campaign Enforcement Advisory”).

person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.¹¹

The Commission confirmed this definition in its 2016 Enforcement Advisory regarding the TCPA and political campaigns.¹² The Commission has clarified that other types of similar messages “do not include telephone solicitations.”¹³

V. Conclusion

P2P text messaging is an exciting technology that facilitates real-time communications that consumers want and expect. As discussed above, P2P text messaging is designed to facilitate communications between universities, non-profits, businesses, and political organizations with their students, donors, customers, and voters through one-on-one human-to-human interactions. As an overarching matter, each message transmitted using a P2P platform must be individually sent with active human intervention from a single sender to a single recipient. P2P texting equipment does not constitute an autodialer, nor are the manually dialed P2P text messages delivered using an autodialer. .

Moreover, non-political P2P text message senders and recipients have a previous relationship through which the recipient has provided his or her contact number. Finally, use of P2P text messages for political purposes does not employ an autodialer or include a telephone solicitation. In light of the foregoing, the P2P Alliance respectfully requests the Commission to clarify that P2P text messaging is not subject to the TCPA’s restrictions on calls to mobile phone numbers.

¹¹ 47 U.S.C. § 227(a)(4); *see also* 47 C.F.R. § 64.1200(f)(14).

¹² *See* 2016 Political Campaign Enforcement Advisory at 7.

¹³ 2016 Political Campaign Enforcement Advisory at 7.

Respectfully submitted,

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