



August 6, 2019

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

The purpose of this *ex parte* Notice is to provide supplementary information in support of consumer groups' opposition to the petition filed by the P2P Alliance for an exemption from the TCPA's protections. This opposition was previously expressed in comments filed on behalf of the low-income clients of the National Consumer Law Center, as well as Consumer Reports, Consumer Federation of America, Consumer Action, Public Knowledge, National Association of Consumer Advocates and U.S. PIRG.¹

Recently, the CTIA, the trade association representing the wireless communications industry in the United States, released a new set of Messaging Principles and Best Practices. In these Best Practices, the CTIA identifies what it sees as the two major types of text communications: those between consumers (labeled Person to Person, or P2P), and all others, which CTIA labels as "Non-Consumer" or "Application-to-Person, or A2P."² The articulated goal of these best practices is to protect consumers from unwanted messages.³

The distinction drawn by the CTIA between the types of messages is relevant to the Commission's consideration the P2P Alliance's request for an exemption from the consent

¹ *Ex parte* Comments filed by National Consumer Law Center, on behalf of its low-income clients and six other national consumer organizations, July 11, 2019, (NCLC comments on P2P) *available here*, <https://ecfsapi.fcc.gov/file/107112393625951/P2P%20Ex%20Parte.pdf>.

² CTIA, *Messaging Principles and Best Practices*, July 2019, at 4, (CTIA Best Practices) *available here*, <https://api.ctia.org/wp-content/uploads/2019/07/190719-CTIA-Messaging-Principles-and-Best-Practices-FINAL.pdf>

³ *Id.*

requirements in the Telephone Consumer Protection Act,⁴ because the types of messages described by the P2P Alliance as typically sent through their systems appear to fall within the CTIA’s definition for non-consumer texts. And the CTIA indicates that these non-consumer texts require a higher degree of care, and assurance that these non-consumer texts are only sent with consent.

The trade association distinguishes between *business to consumer* texts and *consumer to consumer* texts. Consumer to consumer texts are “message exchanges [which] are consistent with conversational messaging among Consumers. . . .”⁵

In contrast, the CTIA points out that automation is not typically used in consumer operations.⁶ Instead, automation is a sign of *business to consumer* texts, identified as A2P. CTIA describes these *business to consumer* texts as:

Non-Consumer (A2P) message traffic includes, but is not limited to, messaging to and from large-to-small businesses, entities, and organizations. For example, Non-Consumer (A2P) messages may include messages sent to multiple Consumers from businesses or their agents, messages exchanged with customer service response centers, service alerts and notifications (e.g., fraud, airline), and machine-to-machine communications. Non-Consumer (A2P) Message Senders may also include financial service providers, schools, medical practices, customer service entities, non-profit organizations, and political campaigns.⁷

The messages described in the P2P Alliance petition, for which the Alliance seeks an exemption, fall into CTIA’s definition of *business to consumer* texts. They are not individual, consumer to consumer, messages. They are instead “sent to multiple consumers from businesses or their agents”⁸ The messages sent to multiple consumers are near identical, or “repetitive messages,” which the CTIA identifies a characteristic of business texts.⁹ As such, they fit the CTIA’s description of business to consumer texts. This is so whether or not each individual message is sent by the click of a computer button by a human. Indeed, CTIA explicitly classifies the very messages the P2P Alliance seeks to exempt—those sent by political campaigns and non-profits—as *business to consumer* texts.

⁴ 47 U.S.C. § 227.

⁵ *Id.* at 10.

⁶ *Id.* “. . . automation in whole or in part used by Non-Consumers to facilitate messaging is not typical Consumer operation.”

⁷ *Id.* at 11 (*emphasis added*).

⁸ *Id.* at 11.

⁹ *Id.* at 10 (a characteristic of a business text is “Repetitive Messages”; “Typical Consumer behavior is not to send essentially or substantially repetitive messages”).

CTIA recommends that senders of these texts “should adhere to the Non-Consumer (A2P) Best Practices as described in this document.”¹⁰ One of these practices is that the sender should ensure that the TCPA’s consent requirements are followed:

The messaging ecosystem should operate consistent with relevant laws and regulations, such as the TCPA and associated FCC regulations regarding Consumer consent for communications. Regardless of whether these rules apply and to maintain Consumer confidence in messaging services, Non-Consumer (A2P) Message Senders should:

- Obtain a Consumer’s consent to receive messages generally;
- Obtain a Consumer’s express written consent to specifically receive marketing messages; and
- Ensure that Consumers have the ability to revoke consent.¹¹

Additionally, the CTIA advises that these message senders should document opt-in consent and provides a specific set of recommendations about how this should be accomplished.¹²

CTIA’s articulated Best Practices illustrate that, in addition to being legally unsound, as we articulated in our previous *ex parte*,¹³ an exemption for P2P messages is unnecessary and contrary to industry standards. CTIA illustrates that there is broad industry recognition that the TCPA’s rules—in particular its consent requirement—are appropriate for this type of text messaging system. The Best Practices also demonstrate that it is entirely feasible for senders of P2P texts to obtain and document consent, just as every other sender of mass texts must do. CTIA’s document provides additional support for our position that the Commission should reject the P2P Alliance’s petition.

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104).

This disclosure is made pursuant to 47 C.F.R. § 1.1206. Thank you very much.

Sincerely,

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¹⁰ *Id.* at 11 (*emphasis added*).

¹¹ CTIA Best Practices at 12 (*emphasis added*).

¹² *Id.* at 14 (*emphasis added*).

¹³ *See* NCLC Comments on P2P.