

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

In the Matter of	)	
	)	
Targeting and Eliminating Unlawful Text	)	CG Docket No. 21-402
Messages	)	

**REPLY COMMENTS OF INCOMPAS**

INCOMPAS submits these reply comments in response to the Federal Communications Commission’s (“Commission”) *Notice of Proposed Rulemaking* seeking comment on proposals designed to improve the messaging ecosystem to better protect consumers from illegal fraud and abuse in the form of “robotexting.”<sup>1</sup>

**I. INTRODUCTION & SUMMARY**

The Commission proposes to address what it notes appears to be a rising number of unlawful robotexts by extending to text messages a number of the agency’s consumer protections against illegal phone calls such as mandatory blocking and the application of caller ID authentication requirements. INCOMPAS supports the Commission’s consumer protection objectives, however, has consistently urged the Commission to take a measured approach to the mitigation of illegal robocalls that preserves a competitive marketplace *while* protecting consumers. The agency must take a similar approach here if it is going to be successful in addressing the fraudulent behavior perpetrated by unlawful robotexting.

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<sup>1</sup> See *Targeting and Eliminating Unlawful Text Messages*, Notice of Proposed Rulemaking, CG Docket No. 21-402, FCC 22-72 (rel. Sep. 27, 2022) (“*Notice*” or “*NPRM*”).

Although the record indicates strong interest across stakeholders in working with the Commission to mitigate the threat of unlawful text messages, the comments in this proceeding raise significant questions about whether the Commission's blocking and caller ID authentication proposals would be suited for the text messaging ecosystem. Based on widely shared experience with ill-defined and disparate blocking in the messaging ecosystem today, INCOMPAS members are concerned that mandatory blocking may further disrupt the delivery of legitimate text messages. INCOMPAS is also concerned about the viability of STIR/SHAKEN as a caller ID authentication solution when applied to texts. Furthermore, several stakeholders have joined INCOMPAS in raising concerns over industry methods being used to curtail illegal robotexting; specifically, that the current mitigation framework carries significant and irregular operational burdens, privacy concerns, competitive issues, and high costs, which are increasingly to consumers' detriment rather than benefit.

Rather than rush solutions that may not comprehensively address unlawful robotexting and harm the competitive marketplace, INCOMPAS urges the Commission to gather additional data about the scope of the robotext problem and the solutions in use. This approach helps ensure that the Commission develops standardized, effective, and transparent solutions as well as a competitively neutral framework better suited to the complex interconnected messaging ecosystem that protects consumers while at the same time maintaining competition and promoting innovation in this hugely popular form of communication.

## **II. THE FCC SHOULD GATHER DATA ABOUT THE SCOPE OF THE ROBOTEXT PROBLEM BEFORE EXTENDING CONSUMER PROTECTIONS AGAINST ILLEGAL ROBOCALLS TO TEXT MESSAGES**

While stakeholders are committed to working with the Commission to mitigate the threat of unlawful robotexts, the record contains little consensus around the scope of the problem and

whether the Commission’s proposals would be effective. As noted by the Voice on the Net Coalition, the *Notice* relies on limited quantitative sources and includes information from parties that have a business interest in the blocking proposals.<sup>2</sup> The record also raises questions about the sources of fraudulent robotexts and whether proposals to block invalid, unallocated, or unused numbers or numbers on the Do-Not-Originate List and extend call authentication requirements to prevent number spoofing would have a material impact on the problem. Like other stakeholders,<sup>3</sup> INCOMPAS members report that threat actors routinely generate unlawful robotexts from both wireless and competitive services with valid numbers and, as such, it would be unnecessary to require blocking of messages from invalid, unallocated, and unused numbers to protect consumers. Furthermore, robotexters more often engage in “identity spoofing” as opposed to traditional “number spoofing,” making the application of a caller ID authentication framework less effective in identifying fraudulent texts. Addressing the unlawful robotext problem will require further investigation, including a better understanding of number resource management, including routing arrangements and rights to use valid numbers given that the messaging ecosystem suffers from slamming and questions about the authority to acquire numbers.<sup>4</sup> Therefore, the Commission should gather more precise, multi-sourced data about the

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<sup>2</sup> See Comments of Voice on the Net Coalition, CG Docket No. 21-402 (filed Nov. 10, 2022) at 2-3 (“VON Coalition Comments”).

<sup>3</sup> See, e.g., Comments of Verizon, CG Docket No. 21-402 (filed Nov. 10, 2022) at 1, 8 (“Verizon Comments”); Comments of the Competitive Carriers Association, CG Docket No. 21-402 (filed Nov. 10, 2022) at 3 (“CCA Comments”) (arguing that a rule requiring network level blocking of invalid, unallocated, and unused numbers would not only be ineffective, but might also “risk blocking legitimate messaging traffic”); Comments of CTIA, CG Docket No. 21-402 (filed Nov. 10, 2022) at 11.

<sup>4</sup> See *Protecting Consumers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-341, Notice of Proposed Rulemaking, FCC 21-102 (rel. Sep. 30, 2022); see also Comments of Somos, Inc., CG Docket No. 21-402 (filed Nov. 10, 2022).

magnitude of the illegal robotexting problem. A better understanding of the threats posed by unlawful robotexts will allow the Commission to enact solutions that are effective, competitively neutral, reasonable, and transparent.

In our initial comments, INCOMPAS expressed concern about the endorsement of broad and ill-defined blocking of texting and how further blocking requirements could have unintended consequences—particularly in light of marketplace imbalances and lack of redress mechanisms. The record contains significant concern from industry, users, and business groups about the potential for legitimate traffic to be blocked under the Commission’s proposals.<sup>5</sup> Blocking legitimate messaging traffic degrades the reliability of the texting environment, particularly for competitive providers and their customers.<sup>6</sup> INCOMPAS contends that caution is warranted and the Commission should reject blocking proposals that may adversely impact legitimate use cases for text messaging.

There also appears to be a growing group of interested parties that want the Commission to require immediate notification of text blocking.<sup>7</sup> Customers that have their legitimate traffic

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<sup>5</sup> See CCA Comments at 3.

<sup>6</sup> As the Commission examines how to preserve the delivery of legitimate messaging, Verizon’s assertion that its’ content-neutral anti-spam tools also “protect” consumers from “unwanted, unconsented-to texts that may be legal under the Telephone Consumer Protection Act” raises concerns about the transparency of its blocking regime and how much legitimate traffic might otherwise be captured by its analytics. Verizon notes that the blocking is consistent with terms and conditions the company has established for access to its network. See Verizon Comments at 5-6.

<sup>7</sup> See Comments of NTCA—The Rural Broadband Association, CG Docket No. 21-402 (filed Nov. 10, 2022) at 5-6 (“NTCA Comments”) (advocating for “measures to protect consumers from mistakenly blocked text messages”); see also Comments of the American Bankers Association, ACA International, American Financial Services Association, Credit Union National Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Council of Higher Education Resources, and Student Loan Servicing

or messages blocked must be provided the immediate opportunity to seek redress. INCOMPAS recommends that any blocking must be accompanied by a notification to the message originator (or at a minimum, the SMS provider) together with competitively neutral avenues for redress. Otherwise, if the Commission does not implement an effective mechanism by which it will enable self-help amongst industry participants, then if it requires blocking it must identify some measures by which the Commission will become aware—in near real-time—when providers are blocking legitimate texts and will intervene—again, in near real-time—to stop that blocking from happening. Failure to do that would create a system that invites degradation of the network’s operation.

The record also supports INCOMPAS’ assertion that the existing STIR/SHAKEN caller ID authentication framework should not be applied to robotexts.<sup>8</sup> Despite progress in developing and implementing the framework in the IP-portions of their voice service networks, much work remains to be done before a caller ID authentication framework is deployed ubiquitously and the Commission can determine whether the caller ID authentication requirements have achieved their desired result. Further, although standards-making organizations’ may be interested in developing the framework for text messaging, they have yet to do so. The record is clear that a caller-ID authentication framework should not be extended to SMS as is. However, INCOMPAS believes that further investigation into the required use of a standardized caller ID authentication methodology may be warranted when standards-making bodies finalize a competitively-neutral standard for the text message ecosystem. At that time, the Commission

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Alliance, CG Docket No, 21-402 (filed Nov. 10, 2022) at 6-8 (supporting the extension of immediate call blocking notification requirements to text messaging).

<sup>8</sup> See, e.g., Comments of Sinch America Inc., CG Docket No, 21-402 (filed Nov. 10, 2022) at 12-15; Comments of T-Mobile USA Inc., CG Docket No, 21-402 (filed Nov. 10, 2022) at 9; NTCA Comments at 2-3.

should seek further comment about if it is in the public interest to adopt such authentication protocols at a future date.

### **III. THE FCC SHOULD GATHER DATA ABOUT THE STATE OF INDUSTRY SOLUTIONS BEFORE ADOPTING MITIGATION AND AUTHENTICATION REQUIREMENTS**

The Commission should seek foundational information about the current SMS messaging frameworks that the wireless industry has established. In our comments, INCOMPAS raised concerns about the recent advent of The Campaign Registry as a new method to stem robotexting abuses noting that carriers “impose fees for a myriad of registries and ‘compliance’ penalties that mobile operators themselves do not pay, degrade competitors’ products through blocking, and collect sensitive information about their competitors’ customers without any methods for recourse.”<sup>9</sup> These policies and practices are inflexible and ultimately harm competition and innovation as currently structured. Further, similar concerns were voiced in the record by the VON Coalition, State Voices, the Coalition for Open Messaging, and Public Knowledge.<sup>10</sup> In its reply, Public Knowledge urged the Commission to meet the dual goal of protecting consumers while preserving the competitive marketplace:

“Consumers need to be protected from the scourge of illegal text messages, but the pressing nature of that mission should not afford carriers a veil behind which

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<sup>9</sup> See Comments of INCOMPAS, CG Docket No. 21-402 (filed Nov. 10, 2022) at 3-4.

<sup>10</sup> See VON Coalition Comments at 5-6 (describing anti-competitive practices that providers have seen from industry’s illegal robotext solutions); Comments of State Voices, CG Docket No. 21-402 (filed Nov. 10, 2022) at 4-5 (explaining that policies and practices created to eliminate illegal and unwanted text messages have burdened legal peer-to-peer texting, including nonpartisan civic communications); Comments of Coalition for Open Messaging, CG Docket No. 21-402 (filed Nov. 10, 2022) at 4-6 (indicating that the A2P 10DLC program has “resulted in overbroad and discriminatory blocking of legal P2P messaging campaigns); Reply Comments of Public Knowledge, CG Docket No. 21-402 (filed Nov. 25, 2022) at 10 (“Public Knowledge Reply Comments”).

they can conceal practices that threaten to undermine the fair, open, and nondiscriminatory expectations that the public has for their communications.”<sup>11</sup>

Before issuing any rules that would require network-level text blocking or apply caller ID authentication requirements, INCOMPAS urges the Commission to gather more facts to understand how the current framework and registration tools are working, whether they are serving competitive interests, and how best to improve the consumer experience. Furthermore, to preserve competition, INCOMPAS urges the Commission to ensure that any requirements it does adopt are applied in a non-discriminatory and competitively- and content-neutral manner.

#### **IV. TEXT MANDATES SHOULD NOT APPLY TO OVER-THE-TOP MESSAGING SERVICES**

Finally, another area of consensus in the record is that the Commission’s proposed mandates should not extend to over-the-top (“OTT”) text messaging services. As explained in INCOMPAS’ comments, OTT text messaging services can refer to number-independent OTT messaging services, like WhatsApp and Facebook Messenger, which are application-based text services that do not require numbers to exchange messages. Because the statute does not apply to OTT messaging services that do not connect to the PSTN within the United States through SMS, number-independent OTT messaging services are therefore out of scope for any mandate. Moreover, number-independent OTT messaging services allow users to exchange messages using the same application and therefore regulations that have been designed for mobile wireless providers are unlikely to mitigate any potential threat on these platforms.

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<sup>11</sup> Public Knowledge Reply Comments at 10.

## V. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its reply comments as it examines the issues raised in the *Notice*.

Respectfully submitted,

**INCOMPAS**

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