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**Innovation Will Protect Consumers From Illegal Text Messages Better Than
New FCC Rules**

by

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On December 20, the FCC announced the opening of an [online portal](#) for private entities to report suspicious robotexts. The Commission also has taken aim at illegal texts through its pending [proposal](#) to impose blocking and caller ID-related restrictions on mobile wireless text messaging services. But the Commission should not adopt the proposal because it's unlikely to provide any new protections to consumers. Mobile wireless providers actively block illegal texts with registration, validation, and other sophisticated analytical tools, and the Commission's proposed rules aren't likely to provide any protection that consumers aren't already receiving. Rather than risk undermining effective marketplace efforts to stop illegal texts, the Commission should continue to emphasize innovative solutions and increase public awareness of ways to report unwanted texts.

Text messaging is ubiquitous among Americans. According to CTIA's 2022 Annual Survey Highlights, U.S. consumers exchanged 2 trillion text and multi-media messages this year. Yet mobile wireless messages using Short Message Service ("SMS") and Multimedia Messaging Service ("MMS") protocol constitute only a fraction of the larger messaging ecosystem. Consumers are heavy users of IP-enabled "over-the-top" ("OTT") applications such as Meta's WhatsApp, Apple's iMessage, as well as messaging functions offered through online social

media platforms like Facebook and Twitter. As the FCC's Consumer Advisory Commission's (CAC) August 2022 [Report on the State of Text Messaging](#) found: "Today, in the U.S., the volume of messages sent on application or OTT platforms is about five times the volume exchanged over SMS/MMS." In other words, about 10 trillion OTT messages are exchanged annually in the U.S.

The FCC's [Notice of Proposed Rulemaking](#) indicates that consumer complaints to the agency about unwanted texts have increased compared to prior years, reaching 15,300 in 2021 and most likely exceeding that number in 2022. Although unfortunate, the rise in unwanted texts ought not be unexpected given the dramatic increase in text messaging volumes. According to CTIA, 2 trillion texts were sent in 2021 – double the amount sent in 2008. To put matters into some perspective, complaints about unwanted texts remains significantly smaller than complaints about unwanted calls. As the FCC's Notice acknowledges, "the Commission receives about 200,000 consumer complaints about unwanted calls, by far the largest source of consumer complaints."

Importantly, mobile wireless providers have developed, through expertise and experience, industry best practices to prevent illegal text messages. The front end set of consumer protections includes vetting and verification of non-consumer businesses and entities that seek to send bulk messages. Non-consumers that wish to send mass messages must go through a registration process with intermediary "registrars." As the CAC report explained, "registrars record a non-consumer's unique identifier, such as a 10-digit telephone number, verify associated information, evaluate the reputation of the message sender, including a message sender's identity and messaging history, and confirm that senders have authority to use an identifier." Wireless providers deliver messages only from authorized providers and by non-consumers whose originating information has been registered and validated.

Additionally, mobile wireless providers use "machine learning" and other tools using real-time analysis to combat spam. They also act on complaints about texts – including those with suspicious website links or domain names – to prevent messages from specific bad actors. And consumers can make use of the mobile device layer filters or downloading specialized apps for combatting unwanted texts.

The FCC's 2018 *Wireless Messaging Service Order*, which clarified the status of text messaging as a Title I "information service," recognized that entrepreneurial innovation by mobile wireless providers has achieved significant success in protecting consumers. The 2018 *Order* stated: "In the absence of a Commission assertion of Title II regulation, wireless providers have employed effective methods to protect consumers from unwanted messages and thereby make wireless messaging a trusted and reliable form of communication for millions of Americans."

However, the FCC is veering away from its flexible, pro-market, and pro-innovation policy and toward imposing regulatory mandates. The Commission is proposing to "require mobile wireless providers to block texts, at the network level, that purport to be from invalid, unallocated, or unused numbers, and numbers on a Do-Not-Originate (DNO) list." Furthermore, the Commission is tentatively proposing to require those providers to implement a caller ID authentication system for text messages.

Unfortunately, the FCC's proposed requirement for network level blocking of all texts from numbers that are invalid, unallocated, unused, or on a DNO list is not likely to help consumers. To date, the record in the Commission's proceeding does not provide any solid evidence that consumers are receiving texts from invalid, unallocated, unused, or DNO-listed numbers. Mobile wireless providers' existing practice of delivering only those messages that come from other consumers or from non-consumers with verified origination information effectively halts illegal texts that originate from suspect numbers.

Indeed, mobile providers report that malicious text messages frequently originate from valid, registered numbers that have been compromised or taken over by bad actors. In view of these factors, the Commission's proposed blocking mandate is misguided because it doesn't target the source of illegal texts. Unmerited enthusiasm for the proposed blocking requirement also ought to be tempered by the fact that the mandate would not apply to OTT messaging services that support the vast majority of messages between consumers.

Moreover, the Commission's proposed blocking mandate will impose unknown but real financial costs on mobile wireless providers. Those providers must alter their practices – and perhaps re-engineer network systems and build new databases in order to meet the proposed requirement. If adopted, the Commission's blocking proposal would risk diverting providers' efforts and financial resources away from further improving and adapting their business methods to combat the frequently shifting tactics of text spammers and scammers.

The FCC's tentative proposal to require mobile wireless providers to establish caller ID authentication for text messages also has significant shortcomings. The agency's Notice appears to be pushing the STIR/SHAKEN framework as the preferred means for implementing a text messaging caller ID authentication mandate. But there is no existing STIR/SHAKEN technology for texts. As the Commission acknowledges in its notice, the STIR/SHAKEN caller ID authentication protocol was developed for voice calls that use session-initiated protocol ("SIP), not for the SMS and MMS protocols for text messaging.

Illegal *voice calls* from invalid, unused, and unregistered phone numbers remain a significant problem, and STIR/SHAKEN was developed to address that. Also, the Commission's approval of STIR/SHAKEN as a method for combatting call spoofing was welcomed by voice providers due to uncertainty about their legal ability as common carriers to block voice calls.

Yet the context for voice calls is decidedly different than for texts. Text messaging services are lightly-regulated or non-regulated Title I "information services," and the mobile wireless providers have a Commission-acknowledged track record in blocking unwanted or illegal text messages. In fact, the registration and validation that wireless providers require before delivering mass text messages serves an equivalent function to caller ID authentication for text messages. The record in the Commission's proceeding provides no strong reason to think that a caller ID authentication mandate would meaningfully improve the results that wireless providers achieve through marketplace innovations.

In conclusion, the FCC should scrap its proposal for mandating blocking and caller ID authentication for text messages. Going forward, the Commission can better promote consumer protection by supporting continued market ingenuity to combat emergent tactics by bad actors who send illegal texts. The Commission also can play an important role in educating the public, including by encouraging consumers to forward unwanted texts to the number "7726" (or "SPAM") or by reporting those texts to the Federal Trade Commission at [ReportFraud.ftc.gov](https://www.ftc.gov/whats-new/2017/07/report-fraud-ftc). Along these lines, a potentially helpful step was taken when the FCC announced the opening of its [online portal](#) for private entities to alert agency enforcement staff of suspicious robotexts. Instead of transplanting voice call strictures onto text messaging, active engagement in voluntary initiatives offer the best prospect for protecting consumers from illegal texts.

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