

Date

The Honorable Jessica Rosenworcel  
Federal Communications Commission  
45 L Street N.E.  
Washington, DC 20554

Dear Chairwoman Rosenworcel:

We are heartened that the Federal Communications Commission (FCC) is considering ways to curtail the number of unwanted telemarketing calls—currently over 1.25 billion every month—in a proceeding pending under the Telephone Consumer Protection Act (TCPA). As the Commission recognizes, the continued onslaught of illegal calls threatens the trustworthiness and usefulness of our nation’s telephone system.

While the consideration of new regulations may be appropriate in some instances, we believe that the FCC’s current regulations already prohibit many of the activities that lead to the proliferation of unwanted telemarketing calls. Both the regulations issued in 2003 delineating the rules for telemarketers to obtain consent for calls to lines subscribed to the Do Not Call Registry,<sup>1</sup> and those issued in 2012 governing consent to receive telemarketing calls made with an artificial or prerecorded voice or an automated telephone dialing system,<sup>2</sup> clearly set out the types of protections intended by Congress to eliminate unwanted telemarketing calls. Both of these regulations allow robocalls calls *only if* the call recipients sign a written agreement relating to calls from a *single seller*.

Additionally, the FCC’s 2003 regulation for telemarketing calls to lines registered on the Do Not Call Registry requires that the “signed, written agreement” must be “*between* the consumer and the seller.” This requirement provides two protections. First, it means that the seller, not a telemarketer or a lead generator, or anyone other than the seller, or the agent of the seller, must be party to the agreement with the consumer. Second, it limits the calls that are covered by the agreement to calls related only to the seller that was the party to the agreement. Enforcement of the current limitations applicable to agreements providing consent for telemarketing calls under the existing regulations would eliminate the sale and trading of these consents which have led to the proliferation of unwanted telemarketing robocalls.

Moreover, as many of these agreements are entered into online, current federal law requires specific protections for consumers receiving writings through electronic records in the Electronic Signatures in Global and National Commerce Act (the E-Sign Act). One example of these protections in the E-Sign Act is the prohibition of oral communication as a substitute for a writing.<sup>3</sup> Although telemarketers routinely ignore the requirements of the E-Sign Act, the legislation’s mandate for E-Sign consent before writings can be provided in electronic records in 15 U.S.C. § 7001(c) is fully applicable.

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<sup>1</sup> 47 C.F.R. § 64.1200(c)(2)(ii).

<sup>2</sup> 47 C.F.R. § 64.1200(f)(9).

<sup>3</sup> 15 U.S.C. § 7001(c)(6)

Finally, as Congress instructed the FCC “to maximize consistency with the rule promulgated by the Federal Trade Commission” relating to the implementation of the Do-Not-Call Registry,<sup>4</sup> we respectfully urge the FCC to issue a guidance along the lines of the FTC’s recent Business Guidance restating its long-held requirements for these unwanted telemarketing calls.<sup>5</sup> As inconsistent rules governing the same activity would be problematic, by issuing guidance similar to the FTC’s, the FCC will assist telemarketers and sellers in complying with these requirements. This guidance should also emphasize that the obligations imposed by the E-Sign Act apply when these agreements are entered into online.

We appreciate your work to curb unwanted and illegal robocalls. Issuing guidance that emphasizes the meaningful requirements of current regulations as well as the requirements of the federal E-Sign Act will go a long way to reduce the number of unwanted robocalls. Thank you for your consideration of this request.

Sincerely,

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<sup>4</sup> The Do-Not-Call Implementation Act, Pub. L. No. 108-10, § 3, 117 Stat. 557 (2003).

<sup>5</sup> Federal Trade Comm’n, Business Guidance, Complying with the Telemarketing Sales Rule, *available at* <https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#prerecordedmessages>.