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B-335933

March 11, 2024

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991; Advanced Methods to Target and Eliminate Unlawful Robocalls*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC) entitled “Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991; Advanced Methods to Target and Eliminate Unlawful Robocalls” (FCC 23-107). We received the rule on January 4, 2024. It was published in the *Federal Register* as a final rule on January 26, 2024. 89 Fed. Reg. 5098. This rule’s stated effective date is March 26, 2024, except for the amendment to 47 C.F.R. § 64.1200(s), in instruction 5, which is effective July 24, 2024, and the amendment to 47 C.F.R. § 64.1200(f)(9), in instruction 6, which is effective January 27, 2025.

The final rule requires terminating mobile wireless providers to block text messages from a particular number following notification from FCC. The rule also codifies that the National Do-Not-Call (DNC) Registry’s protections extend to text messages. In addition, the rule encourages mobile wireless providers to make email-to-text, which FCC states is a major source of illegal texts, a service that consumers proactively opt into. Additionally, FCC states that the rule closes the lead generator loophole by requiring comparison shopping websites to get consumer consent one seller at a time, if prior express written consent is required under the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, and thus prohibits abuse of consumer consent by such websites. Finally, the rule adopts a limited waiver to allow providers to use the Reassigned Numbers Database (RND) to determine whether a number that FCC has ordered to be blocked has been permanently disconnected. FCC states that such waiver will help prevent blocking of lawful texts from a new subscriber to the number.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The *Congressional Record* reflects that the House received this rule on February 16, 2024. See 170 Cong. Rec. H997 (Mar. 6, 2024). The rule has a stated effective date of March 26, 2024, except for the amendment to 47 C.F.R. § 64.1200(s), in instruction 5, which is effective July 24, 2024, and the amendment to 47 C.F.R. § 64.1200(f)(9), in instruction 6, which is effective January 27, 2025. 89 Fed. Reg. 5098. Therefore, the portions of the final rule with an effective date of March 26, 2024, do not have the required 60-day delay in its effective date,

Enclosed is our assessment of FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Cathy Williams
Program Analyst
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
“TARGETING AND ELIMINATING UNLAWFUL TEXT MESSAGES, IMPLEMENTATION OF
THE TELEPHONE CONSUMER PROTECTION ACT OF 1991;
ADVANCED METHODS TO TARGET AND ELIMINATE UNLAWFUL ROBOCALLS”
(FCC 23-107)

(i) Cost-benefit analysis

The Federal Communications Commission (FCC) provided a cost-benefit analysis of the final rule. FCC estimated that the cost of unwanted and illegal texts is \$16.5 billion annually and that the cost of unwanted and illegal calls is at least \$13.5 billion annually. Based on these estimates, FCC stated that even if the final rule eliminates only a small share of unwanted and illegal texts and calls, the benefits of the final rule will be substantial and will significantly outweigh their costs. FCC stated that the final rule will impose only minimal costs on mobile wireless providers and comparative shopping websites.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

The final rule included a Final Regulatory Flexibility Analysis (FRFA) as required by the Act. FCC’s FRFA included a discussion of the need for, and objectives of, the final rule; a summary of significant issues raised by public comments in response to the Initial Regulatory Flexibility Analysis; a response to comments by the Chief Counsel for Advocacy of the Small Business Administration; a description and estimate of the number of small entities to which the rule will apply; a discussion of small businesses, small organizations, and small governmental jurisdictions; a discussion of wireless telecommunications carriers (except satellite); a discussion of all other telecommunications; a description of projected reporting, recordkeeping, and other compliance requirements for small entities; a discussion of steps taken to minimize significant economic impact on small entities, and significant alternatives considered; and a discussion of reporting to Congress.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FCC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not

apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FCC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 11, 2023, FCC promulgated a proposed rule. 88 Fed. Reg. 21497. FCC stated that it received numerous comments on the proposed rule. It responded to comments generally in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FCC stated that the final rule may contain new or modified information collection requirements subject to the Act. Accordingly, FCC stated that the final rule will be submitted to OMB for review and that OMB, the general public, and other federal agencies will be invited to comment on new or modified information collection requirements contained in the final rule.

Statutory authorization for the rule

FCC promulgated this final rule pursuant to sections 151, 152, 154, 155, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251, 254, 255, 262, 276, 403, 409, 616, 620, 716, and 1401–1473 of title 47, United States Code, as well as Pub. L. No. 115-141, 132 Stat. 348 (Mar. 23, 2018).

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FCC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FCC is not subject to the Order.