

United States Senate

WASHINGTON, DC 20510

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VIA ELECTRONIC TRANSMISSION

December 6, 2023

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

Dear Chairwoman Rosenworcel:

We write to you regarding the Federal Communications Commission (FCC) Further Notice of Proposed Rulemaking (FCC Docket 21-402). We are acutely aware that phone calls and text messages are the primary forms of communication that people use to connect themselves with family, friends, businesses, and even governmental entities. It is therefore laudable that the FCC is aiming to protect citizens from unwanted calls and text messages under the Telephone Consumer Protection Act of 1991 (TCPA). We believe that the FCC proposal should have a balance between protecting consumers and preventing unintended negative consequences regarding the ability for comparison shopping websites to function.

As the FCC has already recognized, comparison shopping websites are “helpful” to consumers.¹ They foster consumer choice by allowing consumers to compare different services and products in real time to determine which business is providing them with the best deal. This benefit is quantifiable—for example, according to a recent study from LendingTree, “[b]orrowers in the nation’s 50 largest metros could save an average of \$84,301 over the lifetime of their loans by shopping around for a mortgage.”² Among borrowers nationwide, “borrowers who only receive two offers could save an average of \$35,377 over the lifetime of their loans, while borrowers who get more than five offers could save an average of \$105,912 – or an additional \$70,535.”³ These are significant cost savings for American consumers and are attributable to the accessibility of comparison shopping platforms.

¹ FNPRM, ¶ 63.

² Jacob Channel, *Shopping Around for a Mortgage Could Help Borrowers Save More Than \$84,000 Over Their Loans’ Lifetime*, LendingTree, available at <https://www.lendingtree.com/home/mortgage/mortgage-shopping-study/>.

³ *Id.*

Additionally, comparison shopping websites promote competition among companies of varying sizes. When consumers comparison shop on their own, they are likely to view offers only from larger companies that have robust advertising campaigns. However, consumers who comparison shop online are also able to view offers from smaller and midsize businesses. These are businesses that American consumers may not know about and, resultingly, have not previously considered their offerings. Comparison shopping thus allows smaller businesses to compete on a level field against larger entities. The American consumer wins from this competitive enterprise. They can determine who has earned their business and which business can fairly meet their immediate needs.

Concerns to the FCC's Further Notice of Proposed Rulemaking have been raised by public entities, specifically highlighting the undue harm to comparison shopping websites. The most striking example is the "single seller" consent proposal. According to these advocates, the FCC's Rules limit consent to only one seller at a time, and American consumers may not provide their consent to multiple entities at once. To them, the singular use of "seller" in the FCC rule means that consent can only be conveyed to one entity at a time. Their position would prevent American consumers from providing consent through comparison shopping platforms. The FCC should not sacrifice the numerous benefits that are derived from comparison shopping by adopting this debilitating proposal. The "single seller" interpretation is plainly at odds with the canons of statutory construction that have been endorsed by Congress.⁴

Under the Dictionary Act, Congress has long explained that "words importing the singular include and apply to several persons, parties, or things."⁵ Moreover, such a position is inconsistent with decades of FCC orders that interpret consent as extending to multiple parties and with FCC interpretations of singular nouns within its TCPA Rules.⁶ We respectfully urge the FCC to conform with Congress's instructions and its own prior interpretations of the scope of consent is the TCPA context. The "single seller" proposal contradicts these approaches. The FCC can both rein in the abuses of "consent farms" from rogue lead generators and preserve the benefits of comparison shopping platforms. We urge the FCC to consider targeted solutions that avoid making it impossible for comparison shopping platforms to obtain consent for multiple entities that are matched to the consumer's needs.

The FCC's current record contains other proposals that do not overly regulate legitimate comparison shopping websites. To avoid an onslaught of litigation and confusion, the FCC can clarify and modify the "logically and topically associated" standard that it put forth in the rulemaking notice. Additionally, the FCC can place a limit on the number of potential entities that may receive consent through comparison shopping platforms. These are reasonable proposals that preserve the benefits of comparison shopping platforms for American consumers and also combat the harmful effects from "consent farms" and other rogue lead generators.

⁴ 1 U.S.C. § 1.

⁵ *Id.*

⁶ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, at 10 (applying consent to "creditors and debt collectors"); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, at 141 (2015) (Omnibus TCPA Declaratory Ruling); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, DA 23-62, CG Docket No. 02-278, at 11 (CG Bur. Jan. 23, 2023).

We appreciate the FCC's diligent efforts in attempting to protect consumers from the abuses of some lead generators. As the FCC continues to hear from a wide range of stakeholders, we respectfully ask that you consider and not create unintended strains for comparison shopping sites that provide targeted offers to Americans consumers that lead to monetary savings. Thank you for your prompt attention to this matter.

Sincerely,

Handwritten signature of Thom Tillis in blue ink, written over a horizontal line.

Thom Tillis
United States Senator

Handwritten signature of Marsha Blackburn in blue ink, written over a horizontal line.

Marsha Blackburn
United States Senator