



December 6, 2023

Ms. Marlene Dortch
Secretary
Federal Communications Commission 45 L Street, NE
Washington, D.C. 20554

Re: Notice of Ex-Parte Comments on Second Report and Order and Second Further Notice of Proposed Rulemaking in CG Docket Nos. 02-278 and 21-402, and Waiver Order in CG Docket No. 17-59

Dear Ms. Marlene Dortch,

The Online Lenders Alliance (OLA) would like to provide the following comments to the Federal Communication Commission (FCC) on its Proposed Rule "***Combatting Illegal Text Messages.***"

About OLA

OLA represents the growing industry of innovative companies developing and deploying new financial technology, including proprietary underwriting methods, sophisticated data analytics, and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors, and service providers to lenders, consumer reporting agencies, payment processors, and online marketing firms.

Fintech companies are at the vanguard of innovative online tools that reach new customers, prevent and mitigate fraud, manage credit risk, and service loans. As technology evolves and the public's comfort with online financial transactions grows, protecting consumers is more important than ever. OLA is leading the way to improve consumer protections, with a set of consumer protection standards to ensure that borrowers are fully informed, fairly treated, and using lending products responsibly. OLA members voluntarily agree to comply with OLA Best Practices, a set of rigorous standards above and beyond the current legal and regulatory requirements, that help OLA members, their business partners, and the industry at large stay current on the changing legal and regulatory landscape. OLA Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and mobile devices. Most

importantly, OLA Best Practices help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.¹

Much of the innovation undertaken by OLA members gives consumers greater control over their financial future, especially with access to capital. Whether purchasing a home, starting a business, financing an education, or even paying for auto repairs, the ability to find and secure credit is often a determining factor in a consumer's financial wellbeing. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices that are not available through traditional lending markets.

Overview

Mobile technology has unquestionably transformed our lives, and OLA supports recent FCC efforts to reduce unwanted, nuisance calls and texts. OLA has been an outspoken advocate for reasonable regulation and participated in discussions with the Federal Trade Commission (FTC) leading up to its issuance of its "Follow the Lead"² report about lead generation.

While certain parts of the FCC's proposed rule have merit, other parts would significantly change how lead generators obtain consumer consent and share that information with their marketing partners, resulting in fewer consumer choices, greater exposure to cybercrime, a disproportionate advantage for companies with greater marketing spend to control how consumers can locate resources online, decreased competition among market participants, and increased prices of products and services for consumers.

Introduction

Lead generation is a long-established marketing and advertising method that has become increasingly vital in the age of internet commerce. Specifically, consumer-focused industries rely on third-party internet marketers ("lead generators") to reach specific consumer audiences. Lead generators accomplish this through independent marketing and advertising, creating marketplaces of vetted providers for consumers seeking goods and services.

Some of today's most prominent lead generators include Uber, Google, Lending Tree, Quote Wizard, A Place for Mom, Twitter, Expedia, and Priceline. Through the work of the lead generation industry, legitimate service providers can connect with consumers interested in purchasing their products and services, while simultaneously suppressing illegitimate scammers and other unscrupulous actors the consumer otherwise may encounter in their search.

Whether it is Expedia gathering all available flights for a given time and place, or Lending Tree providing competitive finance rates for a list of qualified lenders, lead generation has become integral to the way consumers find and select products and services. Similarly, it has changed the way businesses find and engage with consumers.

In today's technology-enabled marketing ecosystem, successful companies are laser-focused on consumer choice and product availability. That is certainly true in the financial sector. In fact,

¹ Online Lenders Alliance Best Practices <https://onlendlendersalliance.org/best-practices/>

² <https://www.ftc.gov/reports/follow-lead-workshop-staff-perspective>

one of the first successful internet-based lead generation verticals was developed by fintech companies to serve as a conduit for subprime and near-prime consumers who were unable to access credit through traditional means.

Also referred to as “performance marketing,” lead generation is a faster and more cost-effective way for lenders to maximize their limited marketing resources. In turn, this benefits the consumer by limiting the exposure of their most sensitive data, saving hours (or even days) of frustrating searches and increasing the likelihood of finding the financial solution they seek.

How Lead Generators Help Consumers

Despite the best efforts of government and industry, scam websites exist. When consumers happen upon such a site, they stand to lose hundreds or thousands of dollars. Most consumers are too proud to go on the record about being the victim of a scam, but some are willing to explain.³ Lead generators provide a safe and efficient service for consumers seeking credit by accessing multiple lenders at the same time with only one submission of their information. By submitting only one request and allowing the automated system to securely present that information to multiple lenders, the consumer is not repeatedly divulging personally identifiable information across multiple sites. This approach saves consumers time, while also safeguarding their private information.

Another distinguishing aspect of lead generation in the fintech space is its transparency. When consumers create Facebook profiles or conduct Google searches, they may never think about how the information they provide can be collected, processed, and used by multiple entities to market products or services to them.

Fintech lead generators use clear forms, appropriate disclosures, and adhere to policies that facilitate consumer understanding of precisely how the information they are providing will be used. OLA member lead generators inform the consumer that their information will be used only in furtherance of their loan request, which is in line with the spirit of this Commission’s proposed rule that consent be obtained for marketing partners within the “scope of the original consent.”

Critically, small-dollar lead generators often connect underserved consumers with credit providers willing to quickly help solve the needs of their credit challenges. Furthermore, lead generators in the short-term consumer finance market provide their services to consumers free of charge. Reputable lead generators, complying with the standards outlined and enforced by the OLAs Best Practices, enable consumers to seek capital in a transparent and secure environment from vetted providers that are legally permitted to lend in their respective jurisdictions, creating a more efficient and safer consumer experience.

Rule Changes Will Impact How Lead Generator Obtain Consent, Harming Consumers

³ <https://www.wmar2news.com/matterformallory/it-put-me-in-a-deeper-hole-consumers-in-need-of-a-loan-are-losing-money-to-advanced-fee-scams>. This consumer fell victim to a scam website. Ethical lead generators work only with legitimate lenders and could have prevented this scam if the victim had found an OLA member’s lead generation site instead. Having compliant lead generation sites rank higher than scam sites is the best consumer protection tool against scams like this.

OLA believes that lead generators must be transparent and properly inform consumers regarding what will transpire once they fill out a form online when seeking goods and services, including which parties might contact that consumer. OLA's Best Practices explicitly bar member companies from providing a lead for a purpose other than what the consumer has explicitly provided consent. OLA agrees with the commission that there should be no place for bad actors that mislead consumers, or unscrupulously share consumer data with parties inconsistent with the consumer's original request for services. However, there are concerns that the rule's proposals to institute new one-to-one consent requirements would significantly diminish the number of potential leads and will have several unintended negative consequences for both consumers and the industry.

One outcome of the FCC proposal will be to prevent consumers from working with lead generators and the vetted lenders they know and trust. Lead generators must collect consent from multiple parties, because the lead generator is unable to predict which lender may be interested in offering the consumer a financial product or service before the vetted marketplace participants evaluate the consumer's information. Restricting a consumer's ability to interact with reputable lead generators and their marketplaces of vetted lenders will significantly reduce access to credit for those most in need of assistance, and in many cases drive up the cost of that same credit, as lenders who previously relied on lead generators incur increased costs for customer acquisition. It also increases the likelihood of exposure to fraudsters and scams.

In a newly released report, the FTC found that consumers lost nearly \$8.8 billion to fraud in 2022, an almost 30% increase from the previous year and more than double the amount lost in 2021.⁴ Limiting the number of marketing partners with whom a lead generator can share a consumer's information will force consumers to submit their personal information on multiple websites, posing a much greater risk of consumer data being compromised, including scam websites that steal money and data. Simply put, lead generators reduce fraud by allowing a consumer to access a vetted marketplace of service providers through a single, secured submission of their data.

Requiring one-to-one consent will also impact consumers' general right to contract, which includes one's ability to act with some guarantee as to future obligations and rights. Not until one is faced with the prospect of not having that right does its value become more readily apparent. With this rule, the FCC is effectively denying consumers their fundamental right to give or withhold their consent to be contacted for products they may be interested in. The general right to contract is intimately connected to several other fundamental rights including among others the right to contract for marriage and private education. (*See Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Loving v. Virginia*, 388 U.S. 1 (1967); *Zablocki v. Redhail*, 434 U.S. 374 (1978). Any regulation abrogating the general right to contract will necessarily infringe on these previously recognized fundamental rights.

The rule, as proposed, could drastically change the way consumers obtain their information when purchasing goods and services online. While no consumer wants to be inundated with unwanted

⁴ <https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022>

texts, calls, and emails, altering the process for how lead generators obtain consent and list marketing partners represents a huge shift that may not address the underlying problem while making the shopping experience increasingly convoluted, unsafe, and less effective for consumers.

OLA agrees that one-to-one consent is proper in situations where the goods and/or services being offered to the consumer are not logically and topically related to the original request of the consumer. However, when a consumer is seeking a specific product or service, we believe that the consumer should be permitted to provide broad consent to be contacted by parties that can potentially fulfill the request of the consumer for the specific product or service originally requested. In such circumstances, where a product or service is logically and topically related to the consumer's original request, we do not believe that one-to-one consent is necessary or appropriate, and the requirement of one-to-one consent will negatively impact consumer choice.

Impact on Small Business

The proposed rule will also have significant impacts on US-based small businesses in that both lead generators and lenders will see increased costs to generate and acquire leads. This will enable larger companies to dominate SEO visibility leaving smaller companies who have limited to no marketing budget to experience a significant loss of traffic, thereby adversely impacting their ability to operate. Many of these points were raised by the Office of Advocacy in their *ex parte* letter to the Commission on this issue⁵. Based on these impacts, OLA would strongly encourage the Commission to consider extending the proposed compliance date from 6 months to either 12 or 18 months. This will allow small businesses more time to conform to these requirements.

OLA appreciates the opportunity to provide input on this initiative. If you have questions or need additional information, please feel free to contact me at mday@OLADC.org.

Respectfully submitted,

Michael Day
Policy Director
Online Lenders Alliance

⁵ [Advocacy Requests Further Analysis of FCC Proposal to Require 1-1 Consent for Robotexts and RoboCalls – SBA's Office of Advocacy](#)