

## MEMORANDUM OF UNDERSTANDING

The Federal Communications Commission's Enforcement Bureau (the "Bureau") and the Michigan Department of Attorney General (the "Attorney General's Office") (each individually a "Party" and collectively, the "Parties") share close and common legal interests in working cooperatively to investigate and, where appropriate, prosecute or otherwise take enforcement action against (1) telecommunications fraud and abuse (including but not limited to illegal telemarketing, robocalls, and spoofing) under Section 227 of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 227, and (2) the Michigan Home Solicitation Sales Act, MCL 445.111 *et seq.* ("MHSSA").

The Parties wish to establish a cooperative relationship, consistent with the federal and Michigan laws, concerning investigations or proceedings regarding potential violations of the laws underlying those shared interests ("Enforcement Actions"). The Parties expect to consult one another periodically and agree that the sharing of information by their employees, consultants, agents, and counsel will further their common goals. The Parties also may conduct joint actions or enter into joint investigations. (However, this MOU does not authorize the expenditure or reimbursement of any funds, and nothing in this MOU obligates either Party to expend appropriations, enter into any other contract, or incur other obligations.) The Parties expect that this consultation, sharing, and possible joint action, will lead to public interest benefits, including the appropriate resolution of Enforcement Actions. Accordingly, the Parties enter into this Memorandum of Understanding ("MOU") in order to set forth the understandings and actions that will apply in order to preserve the privileged or confidential nature of any privileged or confidential information that is shared between them in fulfilling their respective responsibilities under state and federal law.

1. The Parties agree to share certain confidential information, documents, communications, privileged materials, and/or work product (hereinafter "Information") relating to their respective Enforcement Actions. No party is obligated to share any Information unless it so choose and each party recognizes that there may be some information that will not be shared. In its Privacy Act Systems of Records Notice FCC/EB-5, the FCC has disclosed that it may share information with other law enforcement agencies. The FCC has determined that sharing the Information with the Attorney General's Office is compatible with the purpose for which it was collected.
2. The Parties recognize the importance of maintaining the confidential and privileged nature of the Information. The Parties intend that all such privileges shall be preserved, and that privileged Information shall be protected from disclosure to anyone who is not a Party to this MOU except as described in paragraph 3. The Parties do not intend through their consultations or sharing of Information to waive work product protection or any privileges, such as, but not limited to, the attorney-client, attorney work product, law enforcement, and deliberative process privileges, which would otherwise attach to any Information shared between the Parties. Accordingly, exchange of Information pursuant to this MOU would not constitute a prior disclosure that would serve to waive the exemptions that could otherwise be asserted under the federal Freedom of Information Act, 5 U.S.C. Sec. 552. The Parties agree that each will treat any Information provided to or material derived from Information provided as an investigatory record subject to a limitation on disclosure or an exemption from disclosure under the Michigan Freedom of Information Act, MCL 445.111 *et seq.* ("MIFOIA"), the Freedom of Information Act, or the federal Privacy Act, 5 U.S.C. Sec. 552a. The Parties expressly reserve all privileges and immunities applicable to the Information.

3. The Bureau will only disclose Information subject to the requirements of applicable Federal Communications Commission (“FCC”) rules. The Attorney General’s Office will only disclose Information to other governmental agencies subject to the requirements of the MIFOIA.
4. Either Party may disclose Information as agreed to by both Parties and may make disclosures that are otherwise mandated pursuant to federal or Michigan statutes. Either Party may use Information to question potential witnesses as long as the Parties do not allow such witnesses to retain such Information and advise the witnesses that such Information must be kept confidential. Further, the Bureau may share Information with other components of the Federal Communications Commission and the U.S. Department of Justice (“DOJ”), including the Offices of the U.S. Attorneys, without notice to the Attorney General’s Office, and such information may be used by the Federal Communications Commission and the DOJ in the course of their investigations.
5. The Parties agree and acknowledge that only the Party providing Information under this MOU is authorized to waive any privileges that may be asserted with respect to such Information. To the extent that the Parties jointly or collaboratively create or generate information or documents under this MOU, the authorization of both Parties is required to waive any privileges that may be asserted with respect to such Information. This MOU does not govern any information that is acquired independently by any Party, even where such information is identical to Information acquired through this MOU.
6. Unless Information that is shared pursuant to this MOU is marked or designated “nonconfidential and public” by the providing Party, its disclosure is subject to the provisions of this MOU.
7. All Information obtained by the Attorney General’s Office from the Bureau, or vice versa, shall remain the property of the providing Party, and, to the extent practicable, shall be maintained and identified as such and may not be disclosed to a third-party, except as permitted in writing by the providing Party or as otherwise provided for in this MOU. Each Party shall, upon the reasonable request of the providing Party, or the termination of this MOU or the law enforcement investigation(s) or proceeding(s) to which this Information subject to this MOU pertains, to the extent permitted by law, return, destroy, delete, or otherwise dispose of any Information as directed by the producing Party.
8. Each Party agrees to establish and maintain safeguards to protect the confidentiality of the Information provided by the other Party pursuant to this MOU, by:
  - (i) Restricting access to the other Party’s Information to its officers, employees, consultants, contractors, and agents who have a need for such Information in the performance of their official duties and, with respect to consultants, contractors and agents, who have entered into a nondisclosure agreement that covers such Information; and informing such persons with access of their responsibilities under the MOU, except as otherwise provided in writing by the other Party;
  - (ii) Establishing appropriate administrative, technical, and physical safeguards to ensure the confidentiality of personally identifiable information and data security and integrity;
  - (iii) Complying with applicable breach notification policies and procedures; and

- (iv) Notifying the other Party if and when inadvertent disclosure of Information occurs and making every reasonable effort to correct promptly the inadvertent disclosure.
9. If a Party receives a request pursuant to the Freedom of Information Act, the Privacy Act, the MIFFOIA, or any legally enforceable demand or request for any Information of the other Party under this MOU (including, but not limited to, any judicial or administrative subpoena, court order, discovery request, or request by the U.S. Government Accountability Office), or in the event the other Party's Information is subject to an affirmative disclosure obligation, the Party subject to the demand, request, or disclosure obligation shall promptly notify the other Party in writing and provide a copy of the demand or request for the Information or describe the affirmative disclosure obligation, and, before complying with the request or demand or disclosure obligation, shall:
- (i) Consult with the other Party and, to the extent applicable, afford the other Party a reasonable opportunity to respond to the demand or request;
  - (ii) Assert all reasonable and appropriate legal exemptions or privileges that the other Party may reasonably request be asserted on its behalf; and
  - (iii) Consent to an application by the other Party to intervene in any action or administrative proceeding to preserve, protect, and maintain the confidentiality of the Information or any related privilege.


In providing such Information, each Party will also endeavor to communicate whether the Information provided is confidential or privileged, including whether the Information contains confidential or privileged law enforcement investigatory records, commercial or financial information, or trade secrets.

10. Nothing in this MOU shall prevent the Bureau or the Attorney General's Office from complying with a legally valid and enforceable order of a court of competent jurisdiction, an order issued by a federal Administrative Law Judge, or, if compliance is deemed compulsory, a request or demand from a duly authorized committee of the United States Senate or House of Representatives, the General Accountability Office, or the Michigan Legislature. Each Party shall provide written notice to the other Party prior to such compliance. Each party shall also attempt to obtain a protective order or similar agreement providing for the maintenance of the confidentiality or privileged status of the Information.
11. No provision of this MOU is intended to, and no provision of the MOU shall be construed to, limit or otherwise affect the authority of the Parties to administer, implement, or enforce any provision of any law subject to their respective jurisdictions.
12. In the event that any provision of this MOU cannot be carried out without violating a provision in any statute to which either Party is subject or applicable rules adopted pursuant to such statute, the relevant provision in the statute or rule shall control.
13. Notwithstanding termination of this MOU pursuant to the provisions of section 14, the confidentiality obligations it established shall remain in full force and effect, for all Information shared or exchanged between the Parties before the written notification of withdrawal without regard to whether (i) the MOU is terminated or (ii) any investigation under which Information is shared reaches final judgment or settlement. Upon termination under this paragraph, each Party shall return, destroy, delete, or

otherwise dispose of the other Party's Information pursuant to section 7 to the extent permitted by law.

14. This MOU, when executed or acted upon by both Parties, shall continue in effect until it is modified by mutual consent of both Parties or terminated upon thirty (30) days advance written notice by either Party.
15. This MOU may be modified, amended, or supplemented only by a written instrument signed by the Parties. This MOU may be executed in counterparts. Facsimile or electronic signatures are acceptable.
16. Any notice to the Bureau required under this MOU shall be delivered to Lisa Gelb, Deputy Bureau Chief, Enforcement Bureau and Kristi Thompson, Division Chief, TCD, Enforcement Bureau at Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554 with electronic copy to [Kristi.Thompson@fcc.gov](mailto:Kristi.Thompson@fcc.gov).
17. Any notice to the Attorney General's Office required under this MOU shall be delivered to Jason Evans, Division Chief, Corporate Oversight Division, Michigan Department of Attorney General, P.O. Box 30736, Lansing, MI 48909, with an electronic copy to [EvansJ@michigan.gov](mailto:EvansJ@michigan.gov).
18. This MOU is not intended to affect any applicable privilege or immunity that would otherwise apply under the governing laws, nor is it intended to create any rights of any kind in any individual or entity that is not a Party to this MOU.

**Dana Nessel**  
Attorney General  
State of Michigan

By:   
Kathy Fitzgerald  
Assistant Attorney General

Date: 03/24/2022

**Loyaan A. Egal**  
Acting Chief, Enforcement Bureau  
Federal Communications Commission

By:   
Kristi Thompson  
Chief, Telecommunications Consumers Division

Date: 25 March 2022