

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition of Public Knowledge, et al.)
)
For a Declaratory Ruling Stating That Text) WT Docket No. 08-7
Messaging and Short Codes Are Title II)
Services or Are Title I Services Subject to)
Section 202 Nondiscrimination Rules)

COMMENTS OF THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce (“Chamber”), the world’s largest business federation representing more than three million businesses and organizations of every size, sector, and region, hereby submits its comments to the Petition for Declaratory Ruling (“Petition”) filed in the above-captioned proceeding by Public Knowledge et al. (“Public Knowledge”).¹ The Chamber urges the Federal Communications Commission (“Commission”) to deny the Petition because new regulations governing text messages and Short Codes are not necessary and would harm the ability of wireless providers to serve their customers.

In September 2007, NARAL Pro-Choice America, an abortion rights group, sought from Verizon Wireless the ability to have its subscribers sign up for text messages from NARAL. This would be accomplished by sending a message to a five-digit number known

¹ Public Knowledge, Free Press, Consumer Federation of America, Consumers Union, EDUCAUSE, Media Access Project, New America Foundation, and U.S. PIRG, Petition for Declaratory Ruling, WT Docket No. 08-7 (filed Dec. 11, 2007). (“*Petition*”).

as a “Short Code.”² Verizon Wireless initially rejected the request saying that it had the right to block “controversial or unsavory” content.³

However, the negative reaction to this decision alerted senior Verizon Management to the matter and within two days NARAL was given the Short Code. According to a Verizon Wireless press statement on the issue, the initial rejection was based on a “dusty internal policy...developed before text messaging protections such as spam filters adequately protected customers from unwanted messages. [That policy] was designed to ward against communications such as anonymous hate messaging and adult materials sent to children.”⁴

In response to the NARAL incident, Public Knowledge filed the Petition, which asks the Commission to clarify the regulatory status of text messaging services, including Short-Code based services sent from and received by mobile phones. The Petition also asks that the Commission declare that refusing to provision a Short Code or otherwise blocking text messages because of the type of speech, or because the party seeking such service is a competitor, is “unjust and unreasonable discrimination” in violation of law.⁵

I. The Commission Should Deny the Petition Because It Fails to Show a Market Failure Regarding the Ability to Send Text Messages to or from Wireless Subscribers

² Adam Liptak, *Verizon Blocks Messages of Abortion Rights Group*, THE NEW YORK TIMES, Sept. 27, 2007, available at: <http://www.nytimes.com/2007/09/27/us/27verizon.html?pagewanted=all>.

³ *Id.*

⁴ Press Statement, *Verizon Wireless Statement on Text Messaging*, VERIZON WIRELESS, Sept. 27, 2007, available at: <http://news.vzw.com/news/2007/09/pr2007-09-27a.html>.

⁵ Public Notice, *Wireless Telecommunications Bureau Seeks Comment On Petition For Declaratory Ruling That Text Messages And Short Codes Are Title II Services or Are Title I Services Subject To Section 202 Non-Discrimination Rules*, DA 08-78, WT Docket No. 08-7 (Jan. 14, 2008).

Text messaging and Short Codes are two distinct mobile applications and should not be confused with one another. Wireless carriers do not block or interfere with consumers' text messages, except to filter out spam, viruses, and other malware.⁶ Text messages can be exchanged between cell phones and between cell phones and personal computers. Wireless subscribers can text message anything to anyone.⁷ Additionally, as long as they adhere to federal spam laws, businesses can send text message-based advertising and ask wireless users to reply with a text message.⁸

The Commission should reject the Petition because it fails to show any evidence that there is a market failure regarding the ability to send text messages to or from wireless subscribers that would justify the imposition of onerous new regulations on the industry.

II. The Commission Should Deny the Petition Because It Fails to Show a Market Failure Regarding the Ability to Obtain Short Codes from Wireless Carriers

A Short Code, also known as a Common Short Code (“CSC”), is a string of numbers five or six-digits long; it is not a phone number.⁹ Wireless carriers lease these Short Codes to allow advertisers to easily interact with wireless subscribers. Today, many television programs and marketing campaigns use CSCs to allow subscribers to vote or register their opinion.¹⁰ Some manufacturers require consumers to use a CSC to qualify

⁶ *How Do Text Messaging and Short Codes Work*, CTIA—THE WIRELESS ASSOCIATION, Feb. 2008. (“*Fact Sheet*”).

⁷ *Id.*

⁸ *Id.*

⁹ *About CSCs—Common Short Codes*, COMMON SHORT CODE ADMINISTRATION, available at: http://www.usshortcodes.com/csc_csc.html.

¹⁰ *About CSCs—What Can I Do With A Common Short Code*, COMMON SHORT CODE ADMINISTRATION, available at: http://www.usshortcodes.com/csc_whatDo.html.

for promotions or contests.¹¹ Additionally, ring tones, real time information, and other data products can be purchased via a text message sent to a Short Code.¹²

To ensure marketing tools provided to advertisers are not used to defraud consumers or as a means of sending unwanted, obscene, or indecent content to wireless subscribers, wireless carriers occasionally decline to activate Short Code campaigns.¹³ The Mobile Marketing Association and the wireless industry have established guidelines that have proven very successful. Consumers are protected from spam, excessive charges, and inappropriate or offensive content, while still allowing the market for communications between third-parties and wireless subscribers to develop.

The NARAL incident was actually a case of the market working, rather than a market failure. Based on public reaction, Verizon Wireless reversed its decision very quickly. However, if this incident had been required to be dealt within a regulatory or enforcement proceeding, then the issue might have taken weeks or months to be resolved, rather than days, and force wireless carriers to incur significant legal fees.

The Commission should deny the Petition because it fails to show any evidence that there is a market failure regarding the ability to obtain Short Codes from wireless carriers that would justify the imposition of onerous new regulations on the industry.

III. Conclusion

As evidenced by the NARAL incident and the industry's self-regulatory efforts, the wireless marketplace works and there is no market failure. Therefore, the Chamber urges the Commission to deny the Public Knowledge Petition.


¹¹ *Id.*

¹² *Id.*

¹³ *Fact Sheet* at 2.

Respectfully submitted,

U.S. CHAMBER OF COMMERCE



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