

July 18, 2008

Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: TCPA Related Informal Consumer Inquiries and Complaints;
Ex Parte Submission in WT Docket No. 08-7

Dear Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell:

The Federal Communications Commission's Consumer & Governmental Affairs Bureau ("CGB") recently released reports describing consumer inquiries and complaints processed during the third and fourth quarters of calendar year 2007.¹ While the CGB Quarterly Reports over the past ten quarters show that wireless complaint rates per million wireless subscribers have fallen in three of the five reported categories, including the important Contract – Early Termination Fees, Billing & Rates, and Carrier Advertising & Marketing categories, more than half of the wireless-related complaints in the last two quarters of reporting were in the "Telephone Consumer Protection Act" ("TCPA") category.² Significantly, these TCPA complaints are associated with autodialing, live or recorded telemarketing calls and "unsolicited commercial e-mail messages to cell phones, pagers, and other wireless telecommunications devices," which are all prohibited activities conducted by third parties that victimize wireless carriers and their customers.

As CTIA has previously noted, individual wireless carriers block as many as 200 million text message advertisements each month, and when they can find them,

¹ Quarterly Report on Informal Consumer Inquiries and Complaints Release, News Release (July 2, 2008) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-283355A1.pdf (last accessed July 18, 2008).

² Wireless-related complaints associated with the TCPA numbered 6,489 in the fourth quarter of 2007 – up more than 50% from 4,113 in the third quarter 2007, and up more than ten-fold from the wireless TCPA complaints the FCC received in the fourth quarter of 2006. In contrast, the FCC received 455 complaints regarding Contract Early Termination Fee complaints for the fourth quarter of 2007; a statistically significant reduction from the 507 Early Termination Fee complaints logged a year before in the fourth quarter of 2006. *See* Quarterly Report on Informal Consumer Inquiries and Complaints Release, News Release (July 2, 2008) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-283355A1.pdf (last accessed July 18, 2008); Quarterly Report on Informal Consumer Inquiries and Complaints Release, News Release (May 9, 2007) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-272902A1.pdf (last accessed July 18, 2008).

wireless carriers take these spammers to court to protect their customers from unwanted and costly commercial messages.³ However, even with all the tools at their disposal, carriers cannot stop every call or unsolicited commercial message that violates the TCPA⁴ and CAN-SPAM Act.⁵ That is why Congress passed the TCPA, and gave the Commission broad authority to enforce it. Accordingly, I am writing to urge the Commission to work with wireless carriers to increase enforcement efforts against third parties sending unsolicited commercial messages to wireless customers. I offer the wireless industry's full assistance and cooperation in assisting the Commission in fulfilling its statutory mandate to enforce these important consumer protection laws.

As I mentioned, wireless carriers are aggressively deploying multiple strategies to protect their customers from unsolicited commercial calls and messages. The number of wireless TCPA complaints would be far greater if not for these efforts. First, wireless carriers are using filters in their networks to help detect and block text messaging spam from third party spammers, often using Internet IP addresses. Carriers are updating their network filters on an ongoing basis to reflect monitoring for new spamming schemes. Second, carriers are offering their customers a variety of text message blocking features that customers can activate via their handset or a wireless carrier's website to block specific email addresses, domain names, or wireless nicknames, or even block text messaging completely.⁶ Third, wireless carriers also have brought civil injunction suits against spammers in selected cases. I am pleased to report that wireless carriers are also working together through CTIA to coordinate efforts to combat these attacks on their networks and customers.

But while prophylactic carrier network maintenance and enhanced customer service are helping to protect and minimize prospective harm to wireless subscribers, carrier efforts alone cannot entirely eliminate the problem. As the complaints logged by CGB make clear, this unlawful third party conduct is disruptive to customers' wireless experiences. This conduct also substantially raises carriers' costs of providing customer care, explaining to customers their options in enhancing their protections going forward, investigating customer complaints and issuing credits. More aggressive investigation and prosecution of these complaints is needed to deter the growth of this fraudulent and oppressive third party conduct. Otherwise, those who are guilty of breaking the law will be emboldened by the knowledge they can evade carriers' civil actions by simply disappearing and popping up under a new

³ Comments of CTIA – The Wireless Association in WT Docket No. 08-7, *In the Matter of Petition of Public Knowledge, et al. for a Declaratory Ruling that Text Messaging and Short Codes are Title II Services or Are Title I Services Subject to Section 202 Nondiscrimination Rules* (Mar. 14, 2008), at 9, citing Kim Hart, “Advertising Sent to Cellphones Opens New Front in War on Spam,” THE WASHINGTON POST, A1 (Mar. 10, 2008).

⁴ 47 U.S.C. § 227.

⁵ 15 U.S.C. § 7701 *et seq.*

⁶ “Increased Text Usage Has Carriers Battling Spammers”, RCR Wireless News (June 4, 2008).

name, with no fear of meaningful FCC enforcement under Section 503 of the Communications Act.⁷

Just as wireless carriers have significantly increased their efforts to combat these third party violations of the TCPA and CAN-SPAM Act, CTIA urges the FCC to similarly strengthen its enforcement efforts in cooperation with carriers. Moreover, as CTIA urged in its Comments in WT Docket No. 08-7, wireless carriers must retain the ability to protect their customers from fraud, spam, and objectionable material. To ensure that carriers can continue these important efforts, the Commission should reject attempts to regulate SMS and Short Code services as Title II services, subject to the Commission's common carrier obligations.

CTIA and its members stand ready to work with the Commission to investigate and prosecute violations of the TCPA and CAN-SPAM Act. We are eager to explore how the wireless industry can partner with the Commission to better protect the nation's 260 million wireless users from unsolicited commercial calls and messages. I welcome any questions you might have and the opportunity to discuss this matter further at your earliest convenience.

Sincerely,



Steve Largent

cc: Aaron Goldberger
Bruce Gottlieb
Renee Crittendon
Wayne Leighton
Angela Giancarlo
Cathy Seidel

⁷ 47 U.S.C. § 503.