

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Rules and Regulations Implementing the)	CG Docket No. 04-53
Controlling The Assault of Non-Solicited)	
Pornography and Marketing Act of 2003)	
)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

COMMENTS OF THE VERIZON TELEPHONE COMPANIES¹

The Commission’s tentative conclusion² that messages forwarded from a computer to a wireless device are not “mobile service commercial messages” under Section 14 of the CAN-SPAM Act is correct.³ The CAN-SPAM Act, the legislative history, and public policy all confirm that the definition of “mobile service commercial message” excludes such forwarded e-mails. Consequently, while senders of commercial e-mails must comply with the CAN-SPAM Act’s strict requirements governing e-mail solicitations generally, they need not satisfy the additional requirements of Section 14 (which typically apply to services such as text messaging) unless they address such messages to a cell phone or similar wireless unit.

¹ These Comments are being filed on behalf of the Verizon Telephone Companies, which are listed in Attachment A, and Verizon Online, which is Verizon’s Internet service provider affiliate. Verizon’s CMRS affiliate, Verizon Wireless, is submitting separate comments regarding the other issues raised in the NPRM.

² *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking in CG Docket No. 04-53 and Further Notice of Proposed Rulemaking in CG Docket No. 02-278, released March 19, 2004 (“NPRM”), at ¶ 16.

³ See Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (2003) (“CAN-SPAM Act”), § 14(d).

The CAN-SPAM Act defines a “mobile service commercial message” (abbreviated in the NPRM as a “MSCM”) as a “commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile services ... in connection with such service.” CAN-SPAM Act, § 14(d). Entities transmitting such messages must adhere to FCC rules that enable CMRS subscribers to avoid receiving unwanted MSCMs. *Id.* § 14(b). By using the word “directly,” the CAN-SPAM Act unquestionably carves out messages that are initially “sent to an electronic mail account that is normally accessed by a personal computer” and then forwarded to a wireless device such as a Blackberry or similar unit. *See* NPRM, ¶ 16 & n.45. The plain meaning of the term “directly” – defined in the dictionary as “without intervention”⁴ – forecloses any more inclusive interpretation.

The legislative history likewise makes clear that messages forwarded from a computer to a wireless device used in conjunction with a CMRS service are not considered MSCMs. Rep. Markey, who introduced the amendment that became Section 14 of the CAN-SPAM Act, explained that “Spam sent to a desktop computer e-mail address, and which is then forwarded over to a wireless network to a wireless device, *i.e.*, delivered ‘indirectly’ from the initiator to the wireless device, would be treated by the rest of the bill and not by the additional section 14 wireless-specific provisions we subject to an FCC rulemaking.” Statement of Rep. Markey, 149 Cong. Rec. at H12196 (Nov. 21, 2003); *see also* H12860 (Dec. 8, 2003)(same).

Finally, excluding forwarded e-mails from the scope of MSCMs is the only logical reading of the CAN-SPAM Act. The opposite interpretation would, as the Commission noted, “result in our rules applying to virtually all electronic mail covered by the CAN-SPAM Act

⁴ *See* Webster’s II New Riverside University Dictionary (Houghton Mifflin 1984) at 381; *see also* Black’s Law Dictionary 7th Ed (West Group 1999) at 472 (defining “directly” as “in a straight line or course”).

because subscribers can forward most electronic mail to their wireless devices.” NPRM, ¶ 16. The Commission further stated its disbelief that “Congress intended such a result given that it would duplicate in large measure the FTC’s authority under the Act.” *Id.* This is unquestionably correct. The CAN-SPAM Act contains stringent protections designed to curtail and punish spam generally. Requiring *all* commercial e-mails also to comply with the requirements governing commercial e-mails addressed to CMRS devices – which, as the Commission recognizes, would be the inevitable result of including messages forwarded from computers within the MSMC category – would impose an impossible obligation on all senders of commercial e-mail. Marketers have no control over whether recipients choose to forward messages to their wireless devices. Accordingly, the sender of an e-mail should not be held responsible for such forwarding where it did not address the e-mail to that device and had no means of preventing the message from being forwarded.

* * *

For these reasons, the Commission should adopt its tentative conclusion that messages forwarded from a computer to a wireless device used by a CMRS subscriber are not “mobile service commercial messages.”

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a/ Verizon Mid-States
GTE Midwest Incorporated d/b/a/ Verizon Midwest
GTE Southwest Incorporated d/b/a/ Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.