

July 23, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, D.C. 20554

**Re: *Ex Parte* Presentation
CG Docket Nos. 04-53, 02-278**

Dear Ms. Dortch:

On Thursday, July 22, 2004, Michael Altschul, Senior Vice President and General Counsel, CTIA-The Wireless Association, and Paul Garnett, Director, Regulatory Policy, CTIA-The Wireless Association, and Howard Symons, Partner, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C., met with Sheryl Wilkerson, Legal Advisor, Office of Chairman Michael Powell, and Eric Gunning, Intern, Office of Chairman Michael Powell, to discuss the Commission's implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"). Participants in the meeting discussed issues detailed in the attached document.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being electronically filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Paul Garnett

Paul Garnett

Attachment

cc: Barry Ohlson, Scott Bergmann

THE COMMISSION SHOULD RECOGNIZE THE UNIQUE SITUATIONS OF
CMRS PROVIDERS WHEN IMPLEMENTATING THE CAN-SPAM ACT

- **Congress Did Not Intend to Impede Communications Between CMRS and Their Subscribers.**
 - CMRS providers have every incentive not to abuse their relationships with wireless subscribers – especially in light of the extent of wireless competition.
 - Some of the legitimate and worthwhile messages that CMRS providers send to their subscribers may not fall within the FTC’s definition of “transactional or relationship message.”
 - Subscribers would still be able to “opt-out” of receiving messages from their CMRS provider.
 - Congress recognized the unique relationship between CMRS providers and their customers by creating a possible exception to the prior authorization requirement for CMRS providers in 14(b)(3) of the Act.

- **The Commission Should Not Dictate A Specific Type of Authorization or Record keeping.**
 - Subscribers should be given maximum flexibility to use a variety of methods to express their preferences regarding the receipt of mobile service commercial messages (“MSCMs”).
 - These methods could include telephone calls to customer service representatives, making a check box on a written contract when purchasing the service, or opting out via the Internet or a message sent from their wireless device.
 - Written authorization is not the only valid authorization for wireless subscribers to receive MSCMs – as the Commission has recognized in other contexts.
 - The Commission also should not dictate the form or content of record-keeping requirements, but rather should give CMRS providers flexibility in satisfying this obligation.