



## Text messaging is a Title II Telecommunications Service subject to nondiscriminatory obligations

### 5 Things You Should Know about Text Messaging and Short Codes

1. Text messaging is a rapidly-growing service and often substitutes for voice phone calls. Short code-based services are used for political calls to action, social planning, distribution of health information, emergency alerts and public safety, and communication with the deaf. The number and type of text messages being sent are increasing daily.
2. People send and receive text messages from their mobile phones to other mobile phone users, political campaigns, text-based services like Google, or even regular landline phones.
3. Text messages can be sent to an address – either a “long code” (a 10-digit number, usually a phone number) or a “short code” (usually a five- or six- digit number). Short and long codes are analogous to phone numbers; the code determines to whom the message is sent and how the message is routed.
4. Short codes are rented to the public by the Common Short Code Administration (“CSCA”). Any entity that wishes to operate a service based on a short code must first lease the short code from the CSCA. Then the entity must ask every wireless provider to recognize and route messages using that code to the service provider. If a wireless carrier refuses to provision that short code, that carriers’ wireless subscribers cannot send messages to that code or receive messages from that code, even if the customer requests them.
5. Today, short codes are only leased to service providers who agree to operate on an “opt-in” basis. In other words, short code services are only allowed to send messages to individuals’ wireless phones after the subscriber has affirmatively chosen to receive these messages.

### Discrimination Against Short Code-based Text Messaging Services is an Ongoing Practice

In September 2007, Verizon Wireless refused to provision a short code to NARAL Pro-Choice America for NARAL’s completely opt-in political alert service. Despite having provisioned many other short codes for similar campaigns, Verizon informed NARAL that it “does not accept issue-oriented (abortion, war, etc) programs” and that it would refuse service to “any organization that seeks to promote an agenda or distribute content that, in its discretion, may be seen as controversial or unsavory to any of [its] users.”

Although Verizon backed down and agreed to provision a short code to NARAL shortly thereafter, in August 2008 it adopted a new policy that preserves Verizon’s right to deny short codes to services that do not share its “corporate values.” In other words, Verizon reserves the authority to decide who can and cannot communicate with their customers from a short code.

In mid-2007, Verizon Wireless, T-Mobile, and Alltel all refused to provision a short code to Rebtel, which provides Voice-over-Internet-Protocol (VoIP) phone services which compete with the carriers’ own offerings. A Verizon representative stated that it had a policy of refusing short codes to companies perceived as competing with them, and Alltel stated that Rebtel’s service “cannibalized” its international rates.

The Mobile Marketing Association publishes guidelines for the entire wireless industry. These guidelines specifically list the uses of short codes that are “Acceptable” and “Unacceptable”. While some of the “Unacceptable” uses involve illegal behavior and should not be protected, some very legitimate services are not listed as “Acceptable.” The guidelines assert that wireless carriers have the discretion to determine who may and may not use short codes.

**For more info on the petition, go to:** <http://publicknowledge.org/issues/text-message-petition>

## **The FCC Should Declare that Discrimination Against Lawful Communications Through Text Messaging is Prohibited under Title II**

Public Knowledge, Free Press, Consumer Federation of America, Consumers Union, EDUCAUSE, Media Access Project, New America Foundation, U.S. PIRG, New York State Assemblyman Richard L. Brodsky, and CREDO Mobile, Inc. have petitioned the FCC to declare that text messaging services are subject to Title II requirements including nondiscrimination and accessibility.

Text Messaging meets all the traditional indicia of common carriage under Title II:

- Text messaging and short codes are widely available to the general public.
- The CSCA advertises the availability of short codes on its web site at <http://www.usshortcodes.com/>.
- The prices and terms for leasing short codes are standardized (not individually negotiated) and advertised on the CSCA web site (\$1000 or \$500 per month).
- Text messaging using short codes is increasingly used for public safety, health, emergency, educational and other important social purposes.

Wireless carriers should not be gatekeepers who decide what types of speech are and are not “acceptable.”

Further, if text messaging is not protected, disabled citizens may be cut off from these critical new communications media. The FCC must clarify the state of text messaging or wireless carriers could choose not to meet § 255 accessibility requirements.

### **Granting the Petition Will Have No Effect on the Wireless Carriers’ Ability to Filter and Block Spam**

The wireless carriers’ principal argument is that granting the Petition will subject wireless consumers to spam. There is no basis for this argument. Wireless carriers would continue to be able to block and filter spam under Title II, just as telephone companies have the right to disconnect telephone service of abusive telephone users. Section 202’s rule against “unjust and unreasonable” discrimination would still allow carriers to block spam and other messages their customers do not want to receive.

Short codes currently operate on an opt-in basis and identify the originator of the message. This means that short code services only send messages to consumers who have asked to receive such messages, and the customer and carrier both know who sent the message. Spammers do not need to obtain short codes to send spam, and doing so would actually compromise the anonymity spammers rely on. In fact, the vast majority of text spam originates from the Internet and uses neither short codes nor long codes.

### **Recognizing Text Messaging as a Title II Service Will Promote Innovation and Protect Consumers**

Granting the Petition will allow providers of text-based services to compete on a level playing field and offer new and innovative services in fields ranging from personal communications to public health. It will also enable the public to communicate freely with the parties of their choice, while preserving the ability of carriers to block messages that their customers do not wish to receive.

The Commission should act immediately and declare that Text Messaging, including provisioning of short codes, is a common carrier service subject to Title II, including Title II’s nondiscrimination and accessibility protections.