

October 29, 2010

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: WC Docket No. 08-7, *Petition of Public Knowledge et al. for Declaratory Ruling Stating that Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules*

Dear Chairman Genachowski:

The undersigned write in support of Public Knowledge's *Petition for Declaratory Ruling Stating that Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules*.¹

Text messaging is a necessary tool for many members of our organizations and for countless public interest and civil rights groups. While many of our constituents do not have Internet access, nearly all of them have wireless cell phones. Wireless service providers should not be permitted to discriminate against certain types of text messages at the expense of the general public.² We thus urge the Commission to swiftly exercise its lawful jurisdiction over text messaging services so that we can continue using such services to help our constituents participate in our democracy.

If service providers are allowed to continue the discriminatory practices outlined in Public Knowledge's *Petition*, our constituents will be adversely affected. Communities of color have been using short code and SMS messaging to encourage democratic participation and galvanize support for important causes. One example, our "Text JUSTICE" campaign, relies on short code and text messages to mobilize communities across the nation whenever action is needed to support immigration reform. With over 100,000 subscribers, some estimate that "Text JUSTICE" is the largest text message action list in the country.³ This has given voice to many who, traditionally, have not been heard in this important debate. And it has been used to great effect. For instance, in May of this year, the "Text JUSTICE" campaign was implemented to

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

² However, wireless carriers should be able to continue protecting their customers from text message spam.

³ Carol Buckheit, *For an Indispensable Advocacy Tool, Look No Further than Your Cell Phone*, NONPROFIT MEDIAWORKS, June 22, 2010, available at <http://www.nonprofitmediaworks.com/2010/06/22/for-an-indispensable-advocacy-tool-look-no-further-than-your-cell-phone/> (last visited Oct. 15, 2010).

assemble over 500,000 people in 30 states in support of just and humane immigration reform.⁴ This is just one of the many examples of how text messaging plays a vital role in activism in our communities.

However, in recent history, mobile providers have begun a troubling trend of discriminating amongst text messaging traffic and refusing to deliver texts with which they disagree. Our organizations invest a great deal of time and money into text message advocacy and should not have to worry about the uncertainty of whether or not a service provider will deem our ideas worthy of transmittal.

We know that the FCC is aware of the various attempts at limiting or censoring text messages over the past years. However, in the face of inaction, these episodes bear repeating. In September 2007, Verizon Wireless prevented Naral Pro-Choice America from leasing a short code for their text message subscription service claiming that they “did not accept issue-oriented programs.”⁵ Verizon reversed their decision within a week and allowed the service to operate.⁶ In March 2010, Sprint Nextel shut down Catholic Relief Services efforts to raise money for the Haitian earthquake due to the inclusion of a feature that allowed donors to initiate a voice connection with the donation center.⁷ The donation service was never reinstated.⁸ And just last month, T-Mobile faced a lawsuit claiming that the provider blocked users from signing up for a text messaging service that provided information about licensed medical marijuana dispensaries.⁹ T-Mobile settled the case out-of-court.¹⁰ The details of the settlement are confidential.¹¹

Public Knowledge’s petition has been pending before the FCC for nearly three years. In the meantime, wireless service providers have attempted increasingly bold actions to limit free speech on their networks. It is time for the Commission to put an end to these unfair practices and exercise its rightful jurisdiction over text messaging.

⁴ More than Half a Million March on May 1, Demand Federal Action on Immigration Reform, available at <http://reformimmigrationforamerica.org/blog/more-than-half-a-million-march-on-may-1-demand-federal-action-on-immigration-reform/> (last visited Oct. 15, 2010).

⁵ Adam Liptak, *Verizon Reverses Itself on Abortion Messages*, N.Y. TIMES, Sept. 27, 2007, available at http://www.nytimes.com/2007/09/27/business/27cnd-verizon.html?_r=2 (last visited Oct. 15, 2010).

⁶ *Id.*

⁷ John Schwartz, *Catholic Charity and Sprint Tangle Over Texting*, N.Y. TIMES, Mar. 24, 2010, available at http://www.nytimes.com/2010/03/25/technology/25texting.html?_r=1&ref=business (last visited Oct. 15, 2010).

⁸ *Id.*

⁹ Verne G. Kopytoff, *T-Mobile Sued Over Blockade of Text Messages*, N.Y. TIMES, Sept. 20, 2010, available at <http://bits.blogs.nytimes.com/2010/09/20/t-mobile-blocks-text-messages/?scp=1&sq=EZ%20Text&st=case> (last visited Oct. 15, 2010).

¹⁰ Cecilia King, *EZ Texting, T-Mobile settle text blocking suit*, THE WASH. POST, Oct. 1, 2010, available at http://voices.washingtonpost.com/posttech/2010/10/ez_texting_t-mobile_settle_text.html (last visited Oct. 15, 2010).

¹¹ *Id.*

Respectfully submitted,



Alex Nogales, President & CEO
National Hispanic Media Coalition (NHMC)

Frank Sharry, Executive Director
America's Voice

Jose Gomez, Director
Arkansas Community Council

Gustavo Torres Yotagri, Executive Director
Casa de Maryland, Inc.

Francisco Lopez, Executive Director
CAUSA Oregon

Deepak Bhargava, Executive Director
Center for Community Change

Reverend David Ostendorf, Executive Director
Center for New Community

Angelica Salas, Executive Director
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)

Kyle de Beausset, Founder
Citizen Orange

Juan Soto, Civil Rights of Immigrants, Director
Gamaliel Foundation

Dr. Antonio Flores, President & CEO
Hispanic Association of Colleges & Universities (HACU)

Josh Hoyt, Executive Director
Illinois Coalition for Immigrant and Refugee Rights (ICIRR)

Kirk Whisler, President & Research Director
Latino Print Network

Brent Wilkes, National Executive Director
League of United Latin American Citizens (LULAC)

Sarang Sekhavat, Federal Policy Director
Massachusetts Immigrant and Refugee Advocacy Coalition

Kathryn F. Galan, Executive Director
National Association of Latino Independent Producers (NALIP)

Ali Noorani, Executive Director
National Immigration Forum

Marielena Hincapié, Executive Director
National Immigration Law Center (NILC)

Angelo Falcón, President
National Institute of Latino Policy (NiLP)

EunSook Lee, Executive Director
National Korean American Service & Education Consortium (NAKASEC)

LeeAnn Hall, Executive Director
Northwest Federation of Community Organizations and Community Organizations in Action

Pramila Jayapal, Executive Director and Founder
OneAmerica, Washington State

Rich Stolz, Campaign Manager
Reform Immigration FOR America

Lisa Duran, Executive Director
Rights for All People / Derechos Para Todos

Marcela Diaz, Executive Director
SOMOS, New Mexico

Mark Potok, Director, Intelligence Project
Southern Poverty Law Center (SPLC)

Emira Palacios
Sunflower Community Action, Kansas

Christine Neumann-Ortiz, Founder & Executive Director
Voces de la Frontera

Will Pittz, Executive Director
WCAN!, Washington State