

Steve Largent
President/CEO

January 25, 2012

Chairman Julius Genachowski
Commissioner Mignon Clyburn
Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: TCPA Violations Associated with Political Campaigns

Dear Chairman Genachowski, Commissioners Clyburn and McDowell:

Just weeks into the primary season, wireless carriers have experienced a significant increase in consumer complaints and inquiries made to their customer call centers regarding unwanted text messages sent by political campaigns. While the exact content of the unsolicited text messages has varied, many of the messages have been accompanied with a web link or a phone number urging the undecided voters to hear the campaign's message.¹ Some consumers have reported receiving unwanted text messages in the middle of the night, between the hours of 11 p.m. and 5 a.m.²

As the Commission has clearly stated,³ *any* autodialed text message sent to a wireless device violates the Telephone Consumer Protection Act ("TCPA").⁴ Not only is the sending of

¹ "Vote 2012: Political Text Messages Wake Up Eastern Iowans," KCRG-TV9 (January 5, 2012) available at <http://www.kcrg.com/news/local/Political-Text-Messages-Wake-Up-Eastern-Iowans-136341073.html> (last accessed January 6, 2012).

² *See id.*

³ <http://www.fcc.gov/guides/spam-unwanted-text-messages-and-email>.

⁴ 47 U.S.C. 227. Although political messages are exempted from the prohibitions applicable to "telephone solicitations," section 227(b)(1)(A)(iii) of the TCPA makes it unlawful for *any* person to make *any* call from any automatic telephone dialing system to *any* telephone number assigned to a CMRS customer (other than a call made for emergency purposes or made with the prior express consent of the called party). Moreover, the Commission explicitly has stated that the TCPA applies with equal measure to "both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls." *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 F.C.C.R. 14014, 14115 (July 3, 2003).*

autodialed text messages disruptive and potentially costly to wireless customers, it also is burdensome to carriers who must expend substantial resources to handle customer inquiries and complaints.

Wireless carriers seek to protect their customers by prosecuting third parties who violate the TCPA. As CTIA previously has indicated to the Commission, carrier efforts alone simply cannot stop every autodialed or unsolicited text message sent to a consumer's wireless device.⁵ In cases where they can locate and identify the source of these messages, wireless carriers have vigorously brought suit to shut down TCPA violations and the industry has cooperated with the Federal Trade Commission in its investigation and prosecution of TCPA cases. However, as CTIA has noted, these messages are not originated by carriers, but rather by persons who flout the TCPA. Congress granted the Commission broad authority to enforce the TCPA in order to protect wireless consumers.

The recent TCPA violations involving autodialed political text messages are likely to become more prevalent as political campaigns gear up for this year's local, state, and national elections. Accordingly, I am writing to request that the Commission protect wireless consumers from receiving autodialed SMS text messages. As a first step, the Commission can and should issue a Public Notice advising political campaigns of the limitations the TCPA imposes on autodialed political text messages and announcing the Commission's intent to protect consumers by vigorously enforcing the law.

In addition, we reiterate our request that the FCC reconsider how it categorizes its quarterly report on consumer inquiries and complaints. While wireless carriers are doing what they can to identify and shut down TCPA violations, the Commission catalogs consumers' TCPA reports as "wireless complaints." We believe it is unfair for the FCC to continue to count these instances, which have nothing to do with wireless carriers' behavior, as "wireless complaints." By way of example, in the first six months of 2011 (based on the most recent FCC reports), the FCC logged more than 43,000 wireless TCPA complaints, which led the FCC to report that it received 53,644 wireless complaints instead of the real number of just 10,585 complaints from more than 300 million wireless subscribers (which is approximately 5.5 complaints per million wireless subscribers per month (0.00055 percent/month)).⁶ The FCC's refusal to properly characterize these consumer complaints significantly and misleadingly expands the apparent rate of consumer complaints about the wireless industry, and for this reason, CTIA once again respectfully asks the FCC to disaggregate TCPA data from its reporting of wireless complaints.

⁵ See letters from Steve Largent to FCC Chairman Kevin Martin, July 18, 2008, letter from Steve Largent to Acting FCC Chairman Michael Copps, May 7, 2009, and CTIA statements available at <http://blog.ctia.org/2010/06/02/additional-thoughts-on-the-fccs-consumer-survey/> and <http://blog.ctia.org/2010/10/14/ctia-the-wireless-association%20%ae-statement-on-the-fcc-meeting/>.

⁶ The FCC's quarterly informal consumer inquiry and complaints reports are available at: <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints>.

Most importantly, CTIA and its members stand ready to work with the Commission in its investigation and prosecution of TCPA violations. We are eager to explore how the wireless industry can partner with the Commission to better protect the nation's wireless users from unsolicited and unwelcome calls and messages.

I welcome any questions you might have and the opportunity to discuss this matter further.

Sincerely,

A handwritten signature in black ink that reads "Steve Largent". The signature is written in a cursive style with a large, stylized initial "S".

Steve Largent