



PUBLIC NOTICE

Federal Communications Commission
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DA 08-78

January 14, 2008

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PETITION FOR DECLARATORY RULING THAT TEXT MESSAGES AND SHORT CODES ARE TITLE II SERVICES OR ARE TITLE I SERVICES SUBJECT TO SECTION 202 NON-DISCRIMINATION RULES

WT Docket No. 08-7

Comments Due: February 13, 2008

Reply Comments Due: March 14, 2008

On December 11, 2007, Public Knowledge, Free Press, Consumer Federation of America, Consumers Union, EDUCAUSE, Media Access Project, New America Foundation, and U.S. PIRG (Petitioners) filed a joint petition for declaratory ruling (Petition).¹ The Petitioners ask the Commission to clarify the regulatory status of text messaging services, including short-code based services sent from and received by mobile phones, and declare that these services are governed by the anti-discrimination provisions of Title II of the Communications Act.² The Wireless Telecommunications Bureau seeks comment on the Petition.

The Petitioners assert that text messaging is “rapidly becoming a major mode of speech, as a replacement for and a complement to traditional voice communications,” and that “short codes are developing into an important tool for political and social outreach.”³ The Petitioners allege that mobile carriers “arbitrarily decide what customers to serve and which speech to allow in text messages, refusing to serve those that they find controversial or that compete with the mobile carriers’ services.”⁴ In their Petition, the Petitioners request that the Commission declare that text messaging services are “commercial mobile services” governed by Title II, and thus are subject to the non-discrimination provisions of Section 202. Alternatively, the Petitioners request that, if the Commission declares that these services are “information services” subject to its Title I authority, the Commission should exercise ancillary

¹ In the Matter of Petition of Public Knowledge et. al for Declaratory Ruling Stating Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules, filed Dec. 11, 2007 (Petition).

² See generally Petition.

³ *Id.* at i.

⁴ *Id.*

jurisdiction to apply the non-discrimination provisions of Title II to text messaging services. Petitioners also request that, in either case, the Commission should declare that refusing to provision a short code or otherwise blocking text messages because of the type of speech, or because the party seeking such service is a competitor, is “unjust and unreasonable discrimination” in violation of law.⁵

This Public Notice establishes certain procedural requirements relating to consideration of the Petition. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules, 47 C.F.R. § 1.1206(b).

Interested parties may file comments on or before **February 13, 2008**, and reply comments on or before **March 14, 2008**. All filings should refer to **WT Docket No. 08-7**. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

⁵ *Id.* at 1-2.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties should also send a copy of their filings to Jennifer Salhus, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 6121, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to Jennifer.Salhus@fcc.gov. Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in **WT Docket No. 08-7** are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418- 0432 (TTY).

For further information regarding this proceeding, contact Jennifer Salhus, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, 202-418-1310.