

SUE MYRICK
9TH DISTRICT, NORTH CAROLINA

COMMITTEES:
ENERGY AND COMMERCE

SUBCOMMITTEES ON:
HEALTH

COMMERCE, TRADE, AND CONSUMER PROTECTION
ENERGY AND AIR QUALITY

FINANCIAL SERVICES
(ON LEAVE)

WEBSITE: <http://www.house.gov/myrick>



Congress of the United States House of Representatives

Washington, DC 20515
September 30, 2009

230 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1976
FAX: (202) 225-3389

DISTRICT OFFICES:
 6525 MORRISON BOULEVARD
SUITE 100
CHARLOTTE, NC 28211
(704) 362-1060
FAX: (704) 367-0852
 197 WEST MAIN AVENUE
GASTONIA, NC 28052
(704) 861-1976
FAX: (704) 864-2445

Chairman Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Chairman Genachowski:

The tragic shooting incident at Virginia Tech University in 2007 highlighted the need for colleges and universities to be better prepared to notify students of emergency situations as they develop on campus. The 110th Congress recognized this need with the passage of the Higher Education Opportunity Act of 2008 (P.L. 110-315), which required colleges and universities to "immediately" notify their campus communities upon confirmation of a significant emergency.

Colleges and universities take this requirement seriously, and as a result many use short message service (SMS) messaging as an integral component of their emergency notification process. In fact, each of the 17 campuses of The University of North Carolina use SMS messaging as an effective, quick and inexpensive way to communicate vital public safety information to their campus communities.

While maximum enrollment in campus-based emergency text messaging programs allows for expedited notifications, UNC campuses (and most colleges and universities) do not require enrollment in the programs; rather these campuses allow students, faculty and staff to voluntarily opt-in to receive emergency text messages on their cell phones. Prior to registration, UNC campuses prompt registrants to acknowledge that enrollment in the program is voluntary and that while no separate fees are incurred by their inclusion; they are nevertheless subject to the standard SMS fees of their cell phone service providers.

In order to utilize the aforementioned bulk text messaging services, campuses must contract with third party SMS aggregators which are responsible for delivering the emergency text messages to individual cell phones. Typically, the SMS aggregators have multiple clients which originate a variety of text messages for both commercial and non-commercial uses; however the messages originating from UNC campuses (and most colleges and universities) are for emergency communications only.

SMS aggregators now require device specific enrollment for campus-based emergency notification systems in addition to the campus-initiated "opt in" process. This device specific enrollment requirement results from an interpretation by wireless service providers of the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM)

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Act of 2003 (P.L. 108-187). Based upon the wireless providers' interpretation of the CAN-SPAM Act, SMS aggregators now send messages requesting confirmation of enrollment to every campus-affiliated wireless phone number that had previously opted-in to receive emergency text messages. This additional opt-in requirement negatively impacts enrollment in emergency text messaging programs. According to UNC public safety officials, almost 50% of those who opt into an emergency notification system ignore messages from aggregators asking that their enrollment be confirmed (possibly not realizing that failure to respond will exclude them from receiving emergency notifications). Such notification exclusions could unnecessarily place members of campus communities in dangerous situations.

As you know, the Act contemplates "commercial messages" delivered to wireless devices but makes no express distinction between emergency notification messages from other bulk messages delivered for entertainment/marketing purposes. Further, it is clear that colleges and universities have a relationship with students, faculty and staff and that the emergency messages sent by colleges and universities are indeed not commercial in nature. Clearly, this is an unintended consequence of the CAN-SPAM Act and is inconsistent with the spirit of and the action required in the Higher Education Opportunity Act.

We appreciate the lengths to which wireless providers and SMS aggregators are going to comply with the CAN-SPAM Act. However, we believe that Congress never intended for emergency notifications to be treated the same as commercial messages, particularly if such action were to degrade communication in an emergency situation. We request a written interpretation from the FCC that will clarify its position of the CAN-SPAM Act with respect to the distinction between commercial and emergency SMS correspondence, and what additional enrollment conditions, if any, must be met in order to provide emergency notification to cell phone owners which have previously chosen to receive such notifications.

I appreciate your consideration of our concern for ensuring safety on college and university campuses across North Carolina and our nation. If you have any questions or require any additional information, please feel free to contact Andy Polk in my office at 202-225-1976.

Sincerely,



Sue Myrick
Member of Congress

cc: Meredith Attwell Baker, Commissioner
Mignon L. Clyburn, Commissioner
Robert Malcolm McDowell, Commissioner
Michael J. Copps, Commissioner



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FAX: (202) 225-3389

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6525 MORRISON BOULEVARD
SUITE 100
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(704) 362-1060
FAX: (704) 367-0852

 197 WEST MAIN AVENUE
GASTONIA, NC 28052
(704) 861-1976
FAX: (704) 864-2446

Facsimile Transmission

Tel: (202) 225-1976 Fax: (202) 225-3389

To: Michael Perko or Leg. Affairs Staff

Fax #: 202-418-2806

From:

Sue Myrick	_____	Matthew Dockham	_____
Taylor Stanford	_____	Sarah Hale	_____
Hollie Arnold	_____	Jordan Moon	_____
Andy Polk	<u>X</u>	Robert Moore	_____
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