

United States Senate

WASHINGTON, DC 20510

December 7, 2018

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The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai,

We write to express our opposition to the Federal Communications Commission's (FCC) proposed Declaratory Ruling classifying text messaging as an information service. We urge you to right this wrong and classify text messaging as a telecommunications service, affording this vital means of communications protections that promote innovation and support freedom of speech.

In the 21st century, text messaging is as essential as telephone service, facilitating trillions of messages between senders and receivers each year – from businesses and customers, from organizations and supporters, from parents and teachers, and from doctors and patients. These messages support commerce, public safety, and political activity, as well as everyday American life. Reasonable access to this vital means of communication should be preserved.

Should text messaging be classified as an information service, telephone carriers would be free to block any text message they wish. By leveraging their gatekeeper role, carriers could force businesses, advocacy organizations, first responders, doctors, and any others to pay for more expensive short code system or enterprise text messaging to reach their audience, rather than by traditional text messages. Carriers could also censor legal text messages if they believe that the content is controversial.

Regrettably, telephone carriers have already leveraged their gatekeeper function to discriminate against lawful content. In 2007, Verizon Wireless blocked mass text messages from Naral Pro-Choice America, an advocacy group supporting women's reproductive rights. Verizon argued that they had the right to censor this content, deeming the messages to be 'controversial and unsavory.'¹ In recent years, several petitioners have submitted filings to the FCC detailing a series of incidents in which carriers are blocking lawful text messages from consenting consumers – messages reminding patients of their appointments, dispatch notifications to service technicians, and two-factor authentication messages that enable consumers to more securely access a website or account.²

Notably, classifying text messages as an information service will not curb the rise in abusive and unwanted robotexts. Text messages are deemed calls under the Telephone Consumer Protection

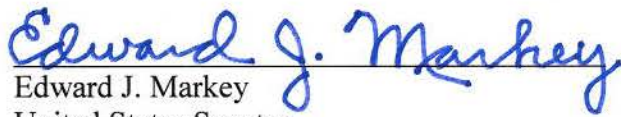
¹ Liptak, Adam. "Verizon Blocks Messages of Abortion Rights Group." *The New York Times*, 27 Sept. 2018, www.nytimes.com/2007/09/27/us/27verizon.html.

² See multiple filings in WT Docket No. 08-7 (November, 2015), <https://ecfsapi.fcc.gov/file/60001339667.pdf>, <https://ecfsapi.fcc.gov/file/60001338394.pdf>, <https://ecfsapi.fcc.gov/file/60001337506.pdf>.

Act (TCPA), which requires any sender of robotexts to obtain permission from the receiver prior to robotexting their mobile device. In recent years, the FCC confirmed that telephone carriers can stop unwanted robotexts or spam without classifying texts as an information service.

Text messaging is an essential telecommunications service that should receive all of the pro-consumer, pro-competition protections afforded under Title II of the Communications Act. That means no blocking or discrimination of lawful content. We thank you for your attention to this important matter.

Sincerely,



Edward J. Markey
United States Senator


Ron Wyden
United States Senator



Kirsten Gillibrand
United States Senator


Tammy Baldwin
United States Senator


Richard Blumenthal
United States Senator


Tina Smith
United States Senator


Benjamin L. Cardin
United States Senator


Elizabeth Warren
United States Senator


Bernard Sanders
United States Senator


Dianne Feinstein
United States Senator