

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, WT Docket No. 08-7

If you receive a text message right now, chances are that you're going to read it. In fact, statistics show that it's a near-certainty: consumers open 98% of the Short Message Service, or SMS, messages they receive, and they open 90% of them almost immediately upon receipt.¹ That's numerical proof that Americans trust and rely on text messaging.

One reason why is that wireless providers prevent large volumes of unwanted or malicious text traffic from reaching consumers' phones. They do this by applying filters, blocking robotexts, and using anti-spoofing measures, among other things. They've been successful, considering that a mere 3% of SMS messages are spam. (By comparison, voice robocalls are driving everyone crazy—me included—and for years they've constituted the number one category of consumer complaints to the Commission.)

But some want the FCC to curtail these efforts to combat unwanted text messages. Specifically, they want the FCC to classify text-messaging as a telecommunications service under Title II of the Communications Act, which would open the floodgates to spam texts.

Today, we reject this request and instead side firmly with consumers by classifying SMS and Multimedia Messaging Service (MMS) as information services and empowering wireless providers to continue taking action against unwanted text messages.

This decision is right on the law; just read the Declaratory Ruling's painstaking analysis of the statutory terms and the nature of text messaging and you'll understand why.

It's also sound policy. The FCC shouldn't make it easier for spammers and scammers to bombard consumers with unwanted texts. And we shouldn't allow unwanted messages to plague wireless messaging services in the same way that unwanted robocalls flood voice services. But that's precisely what would happen if we were to classify text messaging services as telecommunications services and subject them to common-carrier regulation under Title II, as mass-texting companies and others have asked us to do.

The overwhelming support from unusually diverse quarters demonstrates that our approach benefits consumers. Take the bipartisan group of 20 state attorneys general from Connecticut to Idaho that told the FCC: "We believe, and our citizens desire, that this unique wireless service should be kept 'spam free.' We therefore urge the Commission to maintain the status quo, rather than imposing new regulatory structures that would open the spam floodgates."²

¹ See Reply Comments of Mobile Future, WT Docket No. 08-7, at 4 (filed Dec. 21, 2015), <https://ecfsapi.fcc.gov/file/60001389439.pdf>.

² See Letter from Lawrence G. Wasden, Office of the Attorney General, State of Idaho, *et al.*, to Tom Wheeler, Chairman, FCC, WT Docket No. 08-7 (filed Dec. 21, 2015), <https://ecfsapi.fcc.gov/file/60001389522.pdf>.

Or take the National Organization of Black Elected Legislative Women, which told us that “removing the current regulatory framework would open up our constituents to a torrent of unwanted text messages, exposing them to harmful spam and fraud in the process.”³

Or take the National Organization of Black County Officials, which told us that “[w]e agree with the Federal Communications Commission’s proposed order to ensure messaging remains a protected environment for NOBCO’s constituents. This would allow wireless companies to continue their service by filtering out fraudulent or unwanted text messages that their customers do not want.”⁴

Or take the respected public safety organization, NENA: The 9-1-1 Association, which cited the “impact [that] such a decision could have on access to crucial emergency communications services, such as Text-to-9-1-1” and warned that if “either consumers or, worse yet, [Public Safety Answering Points], are inundated with unwanted messages, either cohort could withdraw from widespread use of the SMS platform.”⁵

Or take the National Association of Neighborhoods, which told us that Title II classification “would expose our membership to unwanted spam, and unsafe or fraudulent messaging. . . . The Commission has the opportunity to better protect citizens without implementing unnecessary regulation of wireless carriers by allowing wireless carriers to filter messages. This is the best approach for the communications needs and safety of our neighborhoods.”⁶

Or take the National Black Caucus of State Legislators, which requested “that the Commission keep consumers’ mobile text messaging experiences free from unwarranted solicitations and deny the petition to subject mobile messages to Title II oversight.”⁷

Or take the American Enterprise Institute, which told us that this ruling “would preserve regulatory parity between text messaging and other services that consumers view as substitutes to texting. Internet-based messaging services such as WhatsApp and iMessage are lightly-regulated information services under the [A]ct.”⁸

³ Letter from Rep. Karen Camper (TN), National President, NOBEL Women, to Ajit Pai, Chairman, FCC, WT Docket No. 08-7 (filed Dec. 5, 2018), <https://www.fcc.gov/ecfs/filing/1205217340127>.

⁴ Letter from Dr. Helen Holton, Executive Director, National Organization of Black County Officials, Inc., to Ajit Pai, Chairman, FCC, WT Docket No. 08-7 (filed Dec. 3, 2018), [https://ecfsapi.fcc.gov/file/120386224263/NOBCO%20FCC%20Robo-Text%20appeal%20\(12.03.18\).pdf](https://ecfsapi.fcc.gov/file/120386224263/NOBCO%20FCC%20Robo-Text%20appeal%20(12.03.18).pdf).

⁵ Letter from Trey Forgety III, Director of Government Affairs, NENA: The 9-1-1 Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-7 (filed Dec. 21, 2015), <https://ecfsapi.fcc.gov/file/60001389375.pdf>.

⁶ Letter from Ricardo Byrd, Executive Director, National Association of Neighborhoods, to Tom Wheeler, Chairman, FCC, WT Docket No. 08-7 (filed Dec. 21, 2015), <https://ecfsapi.fcc.gov/file/60001389354.pdf>.

⁷ Letter from Senator Catherine E. Pugh, President, National Black Caucus of State Legislators, to Tom Wheeler, Chairman, FCC, WT Docket No. 08-7 (filed Nov. 30, 2015), <https://ecfsapi.fcc.gov/file/60001387871.pdf>.

⁸ Daniel Lyons, American Enterprise Institute, “The Future of Text Messaging and the Federal Communications Commission: Why Consumers Should Care,” (Dec. 5, 2018), <https://www.aei.org/publication/the-future-of-text-messaging-and-the-federal-communications-commission-why-consumers-should-care/>.

Or take Citizens Against Government Waste, which told us that “the FCC will take an important step in allowing wireless messaging providers to protect consumers from such scams through the application of robotext-blocking, anti-spoofing measures, and . . . other anti-spam features.”⁹

Or—in what may be the most amazing statement of all—take Twilio itself, which suggested changes to the Commission’s description of its services, but made clear that these changes “do not affect the analysis or conclusion reflected in the draft order.”¹⁰ That one of the *petitioners* does not dispute our reasoning or results is pretty strong evidence that we’re on the right track.

We agree with this spectacularly broad range of stakeholders and refuse to let spam texts infest American consumers’ phones. Instead, we classify SMS and MMS as information services and enable wireless providers to continue taking steps to limit spam and ensure that text messaging remains a trusted form of communications for millions of Americans. In short, we stand with American consumers, not those trying to bombard them with spam or scam robotexts.

Finally, it is unfortunate that one of my colleagues has suggested that those in favor of our action today—including Democratic state attorneys general, African-American elected officials, and consumer groups—are aiding and abetting, if not engaging in themselves, deception and “doublespeak.” Actually, doublespeak is demanding that companies offer robocall-blocking tools to consumers for free while—on the very same day—voting to block wireless messaging providers from continuing to use free robotext-blocking tools to protect consumers from unwanted text messages.

Thank you to the Commission’s dedicated staff for their work on this Declaratory Ruling: Robert Chen, Garnet Hanly, Eli Johnson, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Becky Schwartz, Dana Shaffer, Don Stockdale, Cecilia Sulhoff, and Suzanne Tetreault of the Wireless Telecommunications Bureau; Malena Barzilai, David Horowitz, Tom Johnson, Doug Klein, Linda Oliver, Bill Richardson, and Anjali Singh of the Office of General Counsel; Melissa Kirkel, Rashann Duvall, Dan Kahn, Karen Sprung, and Ryan Palmer of the Wireline Competition Bureau; David Furth and Erica Olsen of the Public Safety and Homeland Security Bureau; Barbara Esbin, Dan Margolis, Karen Peltz Strauss, Suzy Rosen Singleton, and Mark Stone of the Consumer and Governmental Affairs Bureau; and Rosemary McEnery and Lisa Saks of the Enforcement Bureau.

⁹ Deborah Collier, Citizens Against Government Waste, “FCC Taking Steps to Protect Consumers from Robotexts,” (Dec. 6, 2018), <https://www.cagw.org/thewastewatcher/fcc-taking-steps-protect-consumers-robotexts>.

¹⁰ Letter from Rebecca Murphy Thompson, Head, Communications Policy, Twilio Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-7, at 1 (filed Dec. 6, 2018), [https://ecfsapi.fcc.gov/file/1206212915792/2018-12-06%20Twilio%20Ex%20Parte%20\(WT%2008-7\)%20.pdf](https://ecfsapi.fcc.gov/file/1206212915792/2018-12-06%20Twilio%20Ex%20Parte%20(WT%2008-7)%20.pdf).