

June 3, 2014

The Honorable Paul Moriarty
New Jersey General Assembly
129 Johnson Road, Suite 1
Turnersville, NJ 08012

SENT VIA ELECTRONIC MAIL TO: asmmoriarty@njleg.org

Dear Chairman Moriarty:

On behalf of CTIA-The Wireless Association, the trade association for the wireless communications industry, I write to express the wireless industry's concerns with New Jersey Assembly Bill 617. While the wireless industry supports the protection of its customers from unsolicited text advertisements, we view this state-specific proposal as unnecessary due to industry practices and existing uniform federal protections outlined below.

Mobile providers offer consumers numerous tools to address unsolicited text messages. Providers, for example, already offer text blocking tools that allow consumers to block text messages. Consumers can also report unsolicited texts to national providers free of charge by copying the original message and forwarding it to the number 7726 (SPAM). Mobile providers have used this tool to investigate entities that send unwanted text messages to their consumers.

It is important to note that federal laws and regulations already prohibit the sending of unsolicited text messages to telephone numbers assigned to wireless services absent the recipient's prior consent. The Federal Communications Commission (FCC) has found that text messages sent to mobile devices are "calls" for purposes of the Telephone Consumer Protection Act (TCPA). The TCPA and the FCC's rules ban text messages sent to a mobile phone using an autodialer. This ban applies even if the mobile phone number has not been placed on the national Do-Not-Call list of numbers telemarketers must not call.

The TCPA provisions apply to any call made using an automatic telephone dialing system, which courts have interpreted to include the technology used to send text messages, and which the FCC has interpreted as any device that permits the dialing of numbers without human intervention. Besides enforcement actions by the FCC, which can assess financial penalties, the TCPA gives recipients of autodialed messages the right to bring private lawsuits for their actual damages, or for damages of \$500 per "call" (\$1,500 if the caller's conduct is "willful").

There are robust federal regulations governing this activity, and these regulations are continually reviewed by the FCC to ensure they reflect changes in telemarketing practices and to ensure they address consumer concerns. In fact, the FCC adopted new regulatory provisions in this area in February 2012 that require prior express written consent for automated telemarketing calls and text messages sent to mobile devices. Accordingly, the FCC is already regulating in this area.

In closing, mobile providers are already offering blocking and reporting tools to consumers, and federal law already prohibits sending unsolicited advertisements via text messaging to consumers. Because federal regulations are already in place addressing this issue, CTIA believes that A617 could

create confusion and conflict between federal and state law. If you need more information or have any questions, please do not hesitate to contact me at 202.736.3200.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerard Keegan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerard Keegan
Senior Director
State Legislative Affairs