



Insight

Text Messaging Should Be Under Clear and Minimal Regulation

WILL RINEHART | DECEMBER 10, 2018

At their next Open Meeting on December 12th, the Federal Communications Commission (FCC) is set to formally [classify text messaging](#) under the Communication Act's Title I designation, a move that would put the service under a light-touch regulatory regime. In reaction to the proposed clarification, [The Washington Post's](#) editorial board echoed critics and said the move "could also allow companies arbitrarily to block even legitimate communications." But these worries are overblown. The FCC is in the right to clarify text messaging services by a Title I designation, since it would give everyone legal clarity and help to fight spam.

Currently, text messaging services aren't defined as either a Title I information service or a Title II telecommunication service, which could become important in future court cases. Companies that operate services regulated under Title I, such as broadband Internet, have more latitude in determining what kind of content can travel over their platforms. Title II services, in contrast, are considered common carriers and, as a result, have far less control over what passes over their networks.

Text messaging services are in legal limbo since they have never been formally classified by the FCC as being either a Title I service like the Internet or a Title II service like telephony. Practically speaking, a Title I classification would simply be a formality, since carriers have already treated these services as such and have been stopping spam messages before they travel the network. If text messaging were defined as a Title II service, on the other hand, carriers would face steep legal battles with mass text messaging services and would be far more limited in what they could do about the problem of spam.

With the rise in robo-calls and text messaging spam, the FCC has been looking for ways to cut down on the problem. This decision to classify text messaging under a Title I regime is but one way to ensure both the FCC and carriers have the legal footing to go after spamming.

Among the biggest proponents of making text messaging a Title II service is Twilio, [a company that](#) sells a service to "Engage customers like never before on Voice, SMS, Video, and WhatsApp." In an extensive [Washington Post expose](#) on the topic of robo-calling and spam, the author specifically mentioned Twilio as a method by which he was able to spam a friend. As the FCC noted in its release, "Twilio seeks to leverage the common carriage obligations associated with [Title II classification] to stop wireless messaging providers from incorporating robotext-blocking, anti-spoofing measures, and other anti-spam features into their offerings."

Other critics of the plan are worried that carriers would have too much authority to stop messages which are legitimate. But the only incident marshalled in defense of this argument [involved Verizon in 2007](#). Unlike every other carrier at the time, Verizon denied NARAL Pro-Choice America's request for a [five digit short code](#) to send news alerts to subscribers. No content was censored, but as Verizon argued at the time, the company didn't want to be seen taking one side or another in the political debate. When the news went public, Verizon faced harsh criticism from angry customers and within days changed course. As Ars Technica Founder and Editor-in-Chief Ken Fisher [pointed out](#), this event was “proof positive that bad policies can and will be addressed if the public's sense of fairness can be marshalled.”

Critics are massively inflating the risk about this classification. The only concern in decades was both minor and resolved within days. On the other hand, the FCC has the opportunity to remove regulatory uncertainty and, ultimately, limit the number of unwanted messages sent via text. In short, this clarification is a smart choice.