

Text Messaging Petition Draws Little Comment

December 7, 2009

Initial comments were filed last week on Club Texting's [request for a declaratory ruling](#) regarding the use of text broadcasting for marketing purposes. Club Texting, a provider of mass texting services to marketers and other customers, asked the FCC to rule that text broadcasters enjoy the same protection from liability under the TCPA that applies to fax broadcasters. Under this standard, a text broadcaster would not be considered a "sender" of the message unless it has a "high degree of involvement" in an illegal message or had actual notice that the transmission is illegal and failed to take steps to prevent the transmission.

The FCC sought public comment on Club Texting's petition, but the only comment was filed by another text broadcaster. Not surprisingly, the commenter also supported a ruling that the FCC will apply the same standard to text broadcasters that it applies to fax broadcasting. No consumers, class action plaintiffs or public interest groups filed in response to the petition.

With such little comment, it is unlikely the FCC will rule on the petition any time soon, if at all. This issue most likely will be addressed initially in litigation challenging a mobile marketing campaign.