

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Text-Enabled Toll Free Numbers)	WC Docket No. 18-28
)	
Toll Free Service Access Codes)	CC Docket No. 95-155

DECLARATORY RULING AND NOTICE OF PROPOSED RULEMAKING

Adopted: June 7, 2018**Released: June 12, 2018****Comment Date: [[30 days after Federal Register publication]]****Reply Comment Date: [[45 days after Federal Register publication]]****I. INTRODUCTION**

1. In this Declaratory Ruling and Notice of Proposed Rulemaking (NPRM), we take another important step to modernize administration of toll free numbers by promoting the innovative use of these valuable numbering resources for text messaging, or texting, purposes. Many businesses, of all sizes, “continue to use toll free numbers for sales and customer service, as well as for advertising and marketing purposes.”¹ In addition, “government organizations and non-profit health, safety, educational, or other non-profit public interest organizations also use toll free numbers to provide vital health and safety services to the public.”²

2. Today, businesses are also using toll free numbers for text message communication with their customers.³ Government and non-profit organizations may also make use of this additional feature of toll free service over time as well. We seek to ensure that businesses and non-profit organizations, as well as individuals using their services, benefit from toll free texting. At the same time, we must protect against potential abuses, such as number spoofing, that can occur from erroneous or fraudulent text-enabling of toll free numbers. We also seek to protect the integrity of our toll free number system that has been in existence since 1967.⁴

3. In this Declaratory Ruling, we further these goals by clarifying that our rules and Orders prohibit a toll free text messaging provider (messaging provider) from text-enabling a toll free number without obtaining authorization from the subscriber for that number (and similarly cannot text-enable a toll-free

¹ *Toll Free Assignment Modernization*, Notice of Proposed Rulemaking, 32 FCC Rcd 7885, 7886, para. 1 (2017) (*Toll Free Assignment Modernization NPRM*).

² *Id.*

³ Ten Digit Communications Comments at 5 (stating that “more than 150 million texts are sent to landline and toll-free numbers daily”).

⁴ *Toll Free Service Access Codes, et al.*, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11166, para. 4 (1997) (*Toll Free Second Report and Order*).

number that is not yet assigned). Likewise, our NPRM furthers these goals by proposing to require messaging providers to obtain a subscriber's authorization through the subscriber's designated Responsible Organization (RespOrg)⁵—the company a subscriber chooses to manage the assignment and routing responsibility for a toll-free number—and to require the RespOrg to reflect the subscriber's authorization to text-enable its toll free number in the Service Management System (SMS) Database.⁶ We also seek comment on what other information, if any, needs to be captured and centrally managed to protect the integrity of the toll free numbering system, and whether such information should be captured in the SMS Database or some other separate registry of such numbers.

II. BACKGROUND

4. The genesis of this proceeding is a 2016 Petition for Declaratory Ruling filed by Somos, Inc., the Toll Free Numbering Administrator (TFNA).⁷ In its Petition, Somos asks the Commission to declare that a messaging provider⁸ may not text-enable a toll free number without seeking authorization from the RespOrg with assignment and routing authority for that number.⁹ Somos also asks the Commission to clarify that any messaging provider that text-enables a toll free number is responsible for ensuring that the number is registered with the TFNA's Text and Smart Services (TSS) Registry, "to ensure accountability and promote open competition in messaging services."¹⁰ The Commission sought comment on the Somos Petition and received comments and replies from a range of stakeholders, including RespOrgs, toll free service providers, wireless service

⁵ 47 CFR § 52.101(b).

⁶ 47 CFR § 52.101(d).

⁷ Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, CC Docket No. 95-155, at 5 (filed Oct. 28, 2016) (Somos Petition or Petition). Somos, as the TFNA, is the carrier of record and established a tariff for the toll free Service Management System. *See generally*, Somos, Inc., Tariff F.C.C. No. 1, 800 Service Management System (SMS/800) Toll-Free Number Registry (TFN Registry) Functions: Regulations, Rates and Charges Applying to the Provision of SMS/800 Functions and Support Services, <https://s3.amazonaws.com/files-prod.somos.com/documents/SMS800FunctionsTariff.pdf> (Toll Free Tariff). The tariff sets out how Somos' service is provided to the RespOrgs and the charges for such service.

⁸ For purposes of this Declaratory Ruling, we define a "messaging provider" as an entity that text-enables toll free numbers and also provides short message service (SMS) gateways, application programming interface support, and/or other tools to users of SMS service. We also define a "messaging hub provider," referred to later in this Declaratory Ruling and NRPM, as an entity facilitating message interoperability and routing efficiencies by transporting messaging traffic between multiple telecommunications service providers. *See generally*, e.g., GSM Ass'n, Open Connectivity SMS Hubbing Architecture (2012), <http://www.gsma.com/newsroom/wp-content/uploads/IR.75-v2.0.pdf>; CTIA, SMS Interoperability Guidelines at 17-21 (2015), http://www.ctia.org/docs/default-source/default-document-library/sms_interoperability_guidelines_v3-2-2_jan_2015-as-posted.pdf (toll free numbers provisioned for SMS); CTIA, Messaging Principles and Best Practices at 6 (2017), <http://www.ctia.org/docs/default-source/default-document-library/170119-ctia-messaging-principles-and-best-practices.pdf?sfvrsn=2> (inter-carrier vendors / hub providers).

⁹ Somos Petition at 1, 11.

¹⁰ *Id.* at 1, 14.

providers, messaging providers, and hub providers, as well as current and potential future users of toll free texting.¹¹ The Somos Petition raises important issues regarding the role of RespOrgs in the text-enabling process and the need for a registry of text-enabled toll free numbers. Because of the importance of these issues, we seek comment on a number of proposals and alternative proposals in the NPRM adopted today.¹²

5. As modern business communications evolve to include greater use of text messaging, it is no surprise that toll free numbers have become a valuable vehicle for businesses to receive and send text messages to customers. Somos reports that in 2015, “more than two trillion text messages (SMS/MMS) were exchanged in the U.S. alone.”¹³ Moreover, according to statistics provided by CTIA, “85 percent of consumers *prefer* to receive a text over a phone call or an email, at least 77 percent of text-capable 18-34 year-olds look favorably on companies offering text capabilities, and more than a quarter of all voicemails already go completely ignored.”¹⁴ Text messages can be sent to toll free numbers from wireless devices by “text-enabling” the numbers, whereby a wireless provider recognizes the toll free number its customer seeks to text by its 8YY area code and then sends the text message to a hub provider. That hub provider then delivers the text message to the toll free subscriber’s messaging provider, which delivers the message to the subscriber.¹⁵ As demonstrated in the record, this additional use for toll free numbers has benefitted businesses in numerous industries by enabling businesses that invest in marketing a toll free number to use the number to effectively reach customers through texting as well as through voice communications.¹⁶

¹¹ *Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Declaratory Ruling Regarding Registration of Text-Enabled Toll Free Numbers*, Public Notice, 31 FCC Rcd 12010 (2016). The following parties filed comments and/or replies: 800 Response Information Services LLC (replies); Aerialink, Inc., CallFire, Inc. and Twilio Inc. (joint comments); ANI Networks (comments); Association of Toll Free Professionals (comments); ATIS (comments); ATL Communications (comments/replies); AT&T (comments); Bandwidth.com and West Telecom Services (comments); CenturyLink (comments); Comet Media (comments); CSF Corporation (comments); CTIA (comments/replies); Dynamic Vision (comments); Salesforce (replies); Signal One (replies); Ten Digit Communications (comments); TSG Global (comments); West Telecom Services (replies); Zipwhip (comments/replies).

¹² In the meantime, we hold in abeyance consideration of the Somos Petition.

¹³ Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155, Attach., Texting with Toll-Free Numbers: Old-School Market Failure Plagues a New-Age Market, Executive Summary at 1 (filed Sept. 29, 2016) (Somos White Paper).

¹⁴ CTIA Comments at 7.

¹⁵ Somos Petition at 5.

¹⁶ *See id.* at 1; *see also* Somos White Paper, Executive Summary at 2 (“As text messaging evolves from a predominately personal communications medium to an effective commercial tool, businesses are beginning to ‘text enable’ the same Toll-Free numbers they have spent years, and substantial monies, advertising for their customers’ use (e.g., 1-800 Flowers or 1-800 I-FLY-SWA).”); Ten Digit Communications Comments at 5 (“Today’s savvy business customer is eschewing clunky voicemail and unread email in favor of this new means to engage.”); ANI Networks at 1; CSF Corporation at 2.

6. Under the toll free number system established in 1967, a business that wants a toll free number—and is not a RespOrg itself—contacts a RespOrg to check the toll free database for available toll free numbers and then to reserve a number on the business’s behalf.¹⁷ The business then becomes the “Toll Free Subscriber” for that number.¹⁸ Once the toll free number is reserved, the RespOrg is responsible for creating a toll free record for the subscriber in the SMS Database.¹⁹ A toll free subscriber is free to port its toll free number to another RespOrg by requesting that its current RespOrg make the change in the database. If the RespOrg refuses to port the subscriber’s number to another RespOrg, the subscriber can ask the TFNA Help Desk to make the change instead.²⁰

7. The record reflects a concern over the lack of safeguards around this new ability to send text messages to toll free numbers. Specifically, commenters claim that toll free numbers could potentially be text-enabled without the toll free subscriber’s approval, or even knowledge.²¹ This possibility would lead to confusion for toll free subscribers and consumers, well as the opportunity for abuse by bad actors seeking to text-enable a toll free number for fraudulent purposes.²² These commenters argue that the current text-enabling process has no meaningful controls and safeguards.²³ Some commenters also claim that the risks from lack of safeguards in the text-enabling process not only threaten the integrity of the traditional voice toll free business, but also deter use and investment in commercial toll free texting.²⁴

¹⁷ Toll Free Tariff at 28, § 2.3.1; *see also Toll-Free Service Access Codes*, Order on Reconsideration, 22 FCC Rcd 22188, 22189, para. 3 (2007) (*2007 Toll Free Order*).

¹⁸ 47 CFR § 52.101(e).

¹⁹ Toll Free Tariff at 28, § 2.3.1.

²⁰ *See id.* at 31, 64-63, §§ 2.3.1(c), 3.6.2; *see also 2007 Toll Free Order*, 22 FCC Rcd at 22189, n.8.

²¹ *See e.g.*, Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc., to Marlene H. Dortch, WT Docket No. 08-7, CC Docket No. 95-155 at 1, Attach. (filed July 1, 2016) (documenting email correspondence regarding RespOrgs that has numbers text-enabled without their knowledge); *see also* Association of Toll Free Professionals Comments at 2; ANI Networks Comments at 1; ATL Reply at 1; Bandwidth.com and West Telecom Services Comments at 7; Letter from Michael B. Hazzard, Counsel for Aerialink et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7 at 2 (filed Nov. 6, 2017).

²² *See* Letter from Colleen Boothby and Sara Kuehnle, Counsel to the Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155, WT Docket No. 08-7 at 2-3 (filed Mar. 8, 2017) (*Ad Hoc Mar. 8, 2017 Ex Parte Letter*).

²³ *See supra* n.21.

²⁴ *See* Salesforce Comments at 1 (arguing that “there is no authoritative root and there is no coordination to ensure synchronization of all involved directories, and thus the integrity of the ecosystem is susceptible to errors and failures”); *see also* Association of Toll Free Professionals Comments at 1; ATL Communications at 2; Letter from Darah Smith Franklin, Counsel, Google Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket 95-155, WT Docket No. 08-7 at 1 (filed Jan. 11, 2017) (*Google Jan. 11, 2017 Ex Parte Letter*) (arguing that the current lack of proper safeguards for toll free texting, “deter[s] adoption of valuable

8. The toll free industry has made efforts to self-regulate the text-enabling of numbers.²⁵ Interested stakeholders do not agree on all aspects of how the toll free text-enabling process should work, however.²⁶ For this reason, Somos filed the instant Petition.

III. DECLARATORY RULING

9. The lack of safeguards and controls in the current text-enabling process can harm both the toll free subscriber and any consumer that calls or texts the toll free number. For example, Ad Hoc Telecommunications Users Committee explains that, “[a]n individual or company could, for example, text-enable the toll free customer service number on the back of a credit card and ask consumers to text via that number sensitive personal and/or financial information associated with their card account.”²⁷ Signal One and West Telecom have also claimed incidents in which toll free numbers they administer have been text-enabled without their knowledge, or that of the subscribers,²⁸ which raises significant questions about the proper routing and delivery of the text messages, among other concerns. And numerous RespOrgs filed a joint letter with the Commission claiming that toll free numbers “can be hijacked if the RespOrg is not part of the text-enabling process.”²⁹ The record also reflects a concern that unassigned toll free numbers could be text-enabled, which renders the toll free number useless for voice service.³⁰

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advertising service analogous to those offered by Google and others for toll free voice calling”).

²⁵ Wireless Association, SMS Interoperability Guidelines at 17-19 (2013), http://www.ctia.org/docs/default-source/default-document-library/sms_interoperability_guidelines_v3-2-1_sep2014; CTIA – The Wireless Association, SMS Interoperability Guidelines 7 (2015), http://www.ctia.org/docs/default-source/default-document-library/sms_interoperability_guidelines_v3-2-2_jan_2015-as-posted.pdf.

²⁶ See CTIA – The Wireless Association, Messaging Principles and Best Practices at 12-13 (2017), <http://www.ctia.org/docs/default-source/default-document-library/170119-ctia-messaging-principles-and-best-practices.pdf?sfvrsn=2>. See also Letter from David Greenhaus, et al., Director of Regulatory Affairs, 800 Response Information Services, LLC, to Meredith Attwell Baker, President and CEO, CTIA (Sept. 2, 2016), [https://ecfsapi.fcc.gov/file/10902430812931/Resp%20Org%20letter%20to%20CTIA%20\(signed%20final\).pdf](https://ecfsapi.fcc.gov/file/10902430812931/Resp%20Org%20letter%20to%20CTIA%20(signed%20final).pdf) (RespOrg Sept. 2, 2016 Letter).

²⁷ Ad Hoc Mar. 8, 2017 *Ex Parte* Letter at 2-3.

²⁸ Signal One Reply at 3; see also West Telecom Services Reply at 4-5; ATL Reply at 1. We note Zipwhip rebuts these claims, arguing that they are “theoretical possibilities” or “manufactured through social engineering specifically to support Somos’ position.” See Zipwhip Comments at 5; see also Letter from Steven A. Augustino, Counsel for Zipwhip, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7 at 2 (filed Feb. 7, 2018); Zipwhip Reply at 5-6 (citing ATL Comments and Association of Toll Free Professionals Comments).

²⁹ RespOrg Sept. 2, 2016 Letter at 2.

³⁰ Somos Petition at 12; see also 800 Response Information Services Reply at 2 (encouraging the Commission to adopt Somos’s recommendations to ensure that toll free numbers are text-enabled only with the authorization of the toll free subscribers, ensure that unassigned toll free numbers are not used for text-messaging, and declare that a

10. We have authority under the Administrative Procedure Act and our rules to issue a Declaratory Ruling terminating a controversy or removing uncertainty³¹ and the Communications Act grants us “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.”³² We believe it necessary on our own motion to address these concerns and clarify who may authorize the text-enabling of a toll free number under our rules to protect the integrity of the toll free numbering system.

11. Specifically, we clarify that only a toll free subscriber may authorize the text-enabling of a toll free number and that such authorization must occur *before* a toll free number is text-enabled. In other words, a messaging provider must obtain a toll free subscriber’s authorization before text-enabling a toll free number, and accordingly may not text-enable an unassigned toll free number (because there would be in such cases no toll free subscriber to authorize toll free texting). We also clarify that a messaging provider must disable toll free texting should a toll free subscriber revoke its authorization. Having a toll free number text-enabled, and thereby used, by someone other than the toll free subscriber would unfairly interfere with the subscriber’s use of that number. By clarifying existing rules, we ensure consistency with our statutory responsibilities and protect the rights of toll free number subscribers, who often invest significant resources in building the brand of particular toll free numbers. And we protect consumers and the businesses that use toll free numbers, prohibiting toll free numbers from being used by two unrelated entities—one for voice and other for the texting—which could lead to consumer confusion and the use of spoofed toll free numbers for fraudulent ends. Finally, doing so also ensures that valuable resources, like toll free numbers, are controlled by those with legitimate claims to their use while reducing the likelihood of potential toll free number exhaust by bad actors who might text-enable unassigned toll free numbers (thus making them unusable for assignment).

12. Our Declaratory Ruling is also consistent with Commission precedent. As explained in the 1997 *Toll Free Second Report and Order*, toll free subscribers “must choose an entity to be responsible for managing that subscriber’s SMS record and for coordinating with the subscriber’s toll free service providers.”³³ In the Wireline Competition Bureau’s 2011 *TNS Declaratory Ruling*, the Bureau determined that the Commission’s rules, including section 52.101, “dictate how

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texting provider may enable or disable toll free texting only with appropriate authorization from the authorized RespOrg).

³¹ 5 U.S.C. § 554(e) (“The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.”); *see also* 47 CFR § 1.2(a) (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”).

³² 47 U.S.C. § 251(e)(1).

³³ *Toll Free Second Report and Order*, 12 FCC Rcd at 11168, para. 7; *see also* 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Report and Order, 11 FCC Rcd 15227, 15328, para. 225 (1996) (explaining that a subscriber designated a RespOrg to handle the subscriber’s toll free number).

subscribers obtain toll free numbers.”³⁴ Thus, this Declaratory Ruling clarifies it is the subscriber that has the exclusive authority to authorize the text-enabling of its toll free number. The subscriber is the only entity that can make the lawful choice to text-enable a toll free number and any non-subscriber—RespOrg, messaging provider, or otherwise—cannot. Finally, the fact that we have not yet addressed the regulatory status of text messaging services under the Communications Act does not preclude us from using our authority under section 251(e)(1) to clarify the role of the toll free subscriber to authorize the text-enabling of a number.³⁵ We are able to proceed incrementally, and choose to do so here.

IV. NOTICE OF PROPOSED RULEMAKING

13. *Introduction.* We next turn to how a toll free subscriber should make clear its authorization to text-enable a toll free number. To ensure that a toll free subscriber has indeed authorized a toll free number to be text-enabled, we propose to require a toll free subscriber to inform its RespOrg of that authorization and for the RespOrg to update the appropriate records in the toll free SMS Database. This proposal will ensure that there is a single, authoritative registry for what toll free numbers have been text-enabled by their subscribers. We also seek comment on what other information, in addition to an SMS Database record reflecting that the toll free number has been text-enabled, if any, needs to be captured and centrally managed to protect the integrity of the toll free numbering system, and whether such information should be captured in the SMS Database or some other toll free registry.

14. *Toll Free Subscriber Responsibility.* Our proposal that a toll free subscriber notify its RespOrg of its authorization to text-enable a toll free number is consistent with our Declaratory Ruling and will protect the integrity of our toll free system, both for traditional voice service and more recent texting services. Moreover, this requirement will ensure that text-enabling information is captured by the RespOrg for inclusion in the SMS Database, enabling the TFNA to protect the integrity of the toll free number system. Whether that information also should be captured in a separate toll free texting registry or registries is discussed below.

15. *RespOrg Responsibilities.* We seek to make recording a subscriber’s authorization to text-enable a toll free number as simple and efficient as possible to further our policy goal of promoting the innovative texting feature of these numbers, while also protecting the use of toll free numbers for traditional voice service subscribers. Our current rules already establish the role and obligations of a RespOrg to “manage and administer the appropriate records in the toll free

³⁴ *Transaction Network Services, Inc., TSYS Acquiring Solutions, LLC, and Electronic Payment System, LLC*, Declaratory Ruling, 26 FCC Rcd 2109 (WCB 2011) (*TNS Declaratory Ruling*).

³⁵ See Zipwhip Opposition at 4; see also AT&T Comments at 3-4. But see 47 U.S.C. § 251(e)(1) (“The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States”). The Wireless Telecommunications Bureau has sought comment on two petitions regarding the regulatory status of text messaging services. *Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling That Text Messages and Short Codes are Title II Services or are Title I Services Subject to Section 202 Non-Discrimination Rules*, Public Notice, 23 FCC Rcd 262 (2008); *Wireless Telecommunications Bureau Seeks Comment Regarding Petition Seeking a Declaratory Ruling Clarifying the Regulatory Status of Mobile Messaging Services*, Public Notice, 30 FCC Rcd 10973 (2015).

Service Management System for the toll free subscriber.”³⁶ We propose that this duty include the duty to update the SMS Database as to whether a number has been text-enabled, as well as to update the database should the subscriber choose to no longer use its toll free number for texting. Do parties agree with this proposed RespOrg obligation and the accompanying requirement?

16. We believe that requiring RespOrgs to update the SMS Database when a toll free number is text-enabled will help alleviate concerns that unassigned toll free numbers could be text-enabled because the RespOrg, in attempting to update the database, would realize if the toll free number to be text-enabled is reserved by a RespOrg or not. If not, the toll free number may not be text-enabled as clarified in our Declaratory Ruling.³⁷ Are there other approaches we should consider, such as the approach recommended by CTIA to allow the industry to decide how to implement a toll free subscriber’s authorization to text-enable a toll free number?³⁸ What impact would such an approach have on the existing toll free system? Are there pros and cons to this approach and, if so, what are they? What other issues should we consider with respect to documenting a subscriber’s authorization to text-enable a toll free number?

17. *Text-Enabling Information to Be Captured.* We also seek comment on what other information—beyond the subscriber’s authorization to text-enable the toll free number—should be captured and centrally managed to avoid confusion about the status of a toll free number and to prevent potential abuse, such as spoofing or fraud. Should we require inclusion of information such as the business name and address of the subscriber? Should we also require inclusion of a point of contact who can make decisions pertaining to the number? Should information be captured about the messaging provider that text-enabled the toll free number, such as its name and contact information? What about routing information? Does that information need to be captured in a centrally-managed database to ensure that sent text messages are properly routed and received? Is there any information that should be captured to manage the voice and texting aspects of a toll free number and to ensure that voice services are not interrupted by the text-enabling of the toll free number and vice versa? What other types of information might be necessary to protect the integrity of the toll free system that should be captured in a centrally managed database?

18. *Where to Include Text-Enabling Information.* Are there reasons the Commission should establish a separate registry solely to enable and manage toll free text messaging, or could all relevant information about a text-enabled number simply be captured in a separate field or fields in the existing SMS Database? What would be the benefits of a separate registry? We note some commenters in the record claim that without a centralized toll free texting registry, “the toll-free voice industry is itself threatened because all toll-free number owners are now at risk by having their security, branding, and customers compromised by this

³⁶ 47 CFR § 52.101(b).

³⁷ See *supra* n.30.

³⁸ CTIA Comments at 7 (“Since the inception of texting to toll free numbers, industry practices have evolved in the marketplace to ensure the voice subscriber has control over whether their toll free telephone number is used for messaging.”).

dangerous situation.”³⁹ Are there reasons these concerns could not be adequately addressed by adding a field to the SMS Database to reflect the text-enabling of a toll free number? Are there legal or administrative issues to including this information in the already established SMS Database? Would there be benefits to having all voice and text-enabled numbers registered in the SMS Database?

19. Alternatively, if parties believe a separate registry is needed, who should have access to such a registry? Should it be limited to RespOrgs, or open to messaging providers or others (and, if so, whom)? Also, should we consider multiple registries or would having a single registry be more efficient for the toll free subscriber to address any issues or concerns raised by text-enabling and thereby more effectively prevent abuse or fraud?⁴⁰ Would being able to access a single registry rather than multiple registries be less burdensome to RespOrgs and messaging providers? Would multiple registries cause confusion for entities that text-enable toll free numbers as to which registry to use? Would these entities need to know all the registries and be required to make sure a text-enabled toll free number is registered with each one? How would the Commission, state commissions, or law enforcement agencies manage a process that could require accessing multiple registries for information on a particular text-enabled toll free number?⁴¹ Would the sum of the costs of multiple registry administrators be higher than the costs incurred by a single registry administrator?

20. Alternatively, are there benefits to a multi-registry system we should consider? CTIA argues that the Commission, “should not assume that the approach to selecting a single vendor of toll free registry services in the context of voice telecommunications services should be extended to messaging.”⁴² What are the benefits of a multi-registry system? Do they outweigh the efficiencies of a single registry? We invite interested stakeholders to address these questions.

21. If we determine that a single toll free texting registry is appropriate, should we make, as recommended by some commenters, the TFNA the registrar as part of its overall toll free number administration responsibilities? The TFNA has developed a toll free texting registry—the “TSS Registry”—which is being used by some industry members. Some commenters support its use as the single registry of text-enabled toll free numbers,⁴³ and maintain that the TFNA is the proper entity to operate the toll free texting registry; it has already been deemed “impartial” by the Commission and is required to make toll free numbers available “on an

³⁹ See CSF Corporation Comments at 2; *see also* 800 Response Information Services Comments at 2; Bandwidth.com, Inc. et al. Comments at 2.

⁴⁰ See Letter from Jared Lawrence, Vice President, Revenue Services, Duke Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 95-155; WT Docket No. 08-7 at 2 (filed July 10, 2017) (“The centralized database of toll-free telephone numbers has enabled Duke Energy . . . not only to quickly shut down fraudulent toll-free numbers, but also . . . to prevent fraud before it happens. Without a similar centralized database for text-enabled toll-free numbers, we will be lacking a critical tool in the fight against fraud.”).

⁴¹ Somos Comments at 10 (stating that “law enforcement relies on the fact that the SMS/800 database and Resp Orgs are the definitive source of Toll-Free information”).

⁴² CTIA Comments at 13.

⁴³ 800 Response Information Services Reply at 2 (arguing that use of the TFNA TSS Registry “should be mandatory” for all texting providers); *see also* ATL Communications Comments at 1.

equitable basis” pursuant to section 251(e)(1) of the Act.⁴⁴ Would Somos, the current TFNA, be neutral in its role as operator of the toll free texting registry?

22. On the other hand, some commenters oppose designating the current SMS Database or TSS Registry as the single authorized text-enabled toll free registry. Would such an approach “lock the wireless industry into a monopoly relationship with Somos”?⁴⁵ Would allowing Somos to administer both the SMS Database and a separate toll free texting registry make the system a more likely target for a Denial of Service attack? What other concerns, if any, do commenters have? Are those concerns limited to designating Somos to manage the single text-enabling registry or do they extend to the Commission designating any administrator over a single database?

23. *Administration.* We seek comment on issues that likely would arise should we determine, based on the record, to require a RespOrg to record a subscriber’s authorization to text-enable a toll free number in the SMS Database or to otherwise require such authorization to be recorded in any separately managed toll free texting registry. Initially, if adopted, our proposed rule would require any entity that text-enables a toll free number on behalf of a business or non-profit organization to reflect that number in the SMS Database, and we seek comment on whether such information also should be captured in any separate toll free texting registry. To ensure that we capture all text-enabled toll free numbers in any appropriate database or registry, we propose to apply this same requirement to those numbers that have already been text-enabled. We also propose that in order to effectuate this requirement, entities would be required within six months of the effective date of the new rule to enter into the SMS Database or any toll free texting registry all numbers they had text-enabled. We seek comment on these proposals. What registration process should be employed to enter all these numbers? Is six months sufficient time for the registration process to be completed? Would the benefit of having all text-enabled numbers registered outweigh the burden of the registration process?

24. *Commission Role.* We seek comment on what role, if any, the Commission should have in choosing a toll free texting registrar or registrars and in overseeing any toll free texting registries. In addition, section 251(e) of the Communications Act requires that the Commission create or designate one or more impartial entities to administer telecommunications numbering.⁴⁶ The neutrality criteria set forth in section 52.12(a)(1) of our rules explains the statutory requirement by adopting a test to establish neutrality.⁴⁷ We expect that any entity that administers a toll free texting registry must meet the neutrality requirements of the Act and our implementing rules, just as Somos must meet those requirements in administering the toll free number database. We seek comment

⁴⁴ Aerialink et al. Comments at 4.

⁴⁵ AT&T Comments at 7-8; CenturyLink Comments at 2; *see also* Google Jan. 11, 2017 *Ex Parte* Letter, Attach. at 8 (“There should not be a default single administrator.”).

⁴⁶ 47 U.S.C. § 251(e).

⁴⁷ That test states that a numbering administrator (i) may not be an affiliate of any telecommunications service provider; (ii) may not issue a majority of its debt to, or may not derive a majority of its revenues from, any telecommunications service provider; but (iii) notwithstanding these criteria, may be determined to be or not be subject to undue influence by parties with a vested interest in numbering administration and activities. *See* 47 CFR § 52.12(a)(1)(i)-(iii).

on these views.

25. *Maintaining Status Quo.* Finally, we seek comment on the pros and cons of maintaining the status quo and not mandating that information about toll free numbers that have been text-enabled be captured in either the SMS Database or in a separate toll free text-enabling registry or registries.⁴⁸ Should we take the view that toll free texting is a nascent offering which is still evolving, such that the Commission should not get involved in the registry issue at this time?⁴⁹ If so, what are the advantages and disadvantages to such an approach? Are there any other potential impacts of our proposals on this emerging feature of toll free service?

26. *Legal Authority.* As stated above, section 251(e)(1) of the Act gives us “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States” and provides that numbers must be made “available on an equitable basis.”⁵⁰ Under the Commission’s rules implementing that section of the Act,⁵¹ a toll free subscriber reserves a number in the toll free database in order for it to receive calls made to that number. Accordingly, we retain “authority to set policy with respect to all facets of numbering administration in the United States.”⁵²

27. In this NPRM, we propose, pursuant to that same authority, that a toll free subscriber must inform its RespOrg of its authorization to text-enable a toll free number and that the RespOrg must update the appropriate records in the SMS Database.⁵³ We believe these additional steps will help safeguard the toll free number assignment process in general and the toll free text-enabling process in particular by alleviating confusion about the status of a toll free number, and will also prevent any potential abuse, such as spoofing or fraud. For this reason and those previously discussed in this NPRM, the proposals herein further our statutory mandate to set policy on numbering administration in the United States. We also seek comment herein on a number of additional measures to promote these same goals and that, if adopted, would also rely upon our numbering authority under section 251(e)(1) of the Act. We invite comment on the sources of authority discussed above.

⁴⁸ See CTIA Comments at 12 (“CTIA believes that the current processes for enabling toll free numbers for messaging are aligned with the Commission’s goals for managing toll free telephone numbers to support toll free telephone service.”).

⁴⁹ Zipwhip Opposition at 6.

⁵⁰ 47 U.S.C. § 251(e)(1).

⁵¹ 47 CFR § 52.101(e).

⁵² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512, para. 271 (1996).

⁵³ See 47 U.S.C. § 251(e).

V. PROCEDURAL MATTERS

A. Comment Filing Procedures

28. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- ☐ Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>
- ☐ Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- ☐ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- ☐ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- ☐ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- ☐ People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

B. Ex Parte Rules

29. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation

⁵⁴ 47 CFR §§ 1.1200 *et seq.*

of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

C. Initial Regulatory Flexibility Analysis

30. Pursuant to the Regulatory Flexibility Act (RFA),⁵⁵ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Notice of Proposed Rulemaking. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on the Notice of Proposed Rulemaking. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁵⁶

D. Paperwork Reduction Act

31. This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.⁵⁷

E. Contact Person

32. For further information about this proceeding, please contact E. Alex Espinoza, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C211, 445 12th Street S.W., Washington, DC 20554, at (202) 418-0849 or alex.espinoza@fcc.gov.

VI. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 201(b), and 251(e) of the Communication Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i),

⁵⁵ See 5 U.S.C. § 603.

⁵⁶ See 5 U.S.C. § 603(a).

⁵⁷ See 44 U.S.C. § 3506(c)(4).

201(b), and 251(e)(1) that this Declaratory Ruling, issued *sua sponte*, and Notice of Proposed Rulemaking IS ADOPTED.

34. IT IS FURTHER ORDERED that this Declaratory Ruling SHALL BE EFFECTIVE upon release.

COMMISSION

FEDERAL COMMUNICATIONS

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rule**

The Federal Communications Commission proposes to amend Part 52 of Title 47 of the Code of Federal Regulations as follows:

PART 52 - NUMBERING

* * * * *

Subpart D—Toll Free Numbers

1. Amend section 52.101(d) by:

The revision reads as follows:

§ 52.101(d) Service Management System Database (“SMS Database”).

The administrative database system for toll free numbers. The Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about toll free numbers within their control, including whether a toll free number has been text-enabled. The Service Management System shares this information with the Service Control Points. The entire system is the SMS Database.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In this NPRM, we propose that a toll free subscriber must inform its RespOrg of its authorization to text-enable a toll free number and that the RespOrg must update the appropriate records in the SMS Database.⁴ We believe this proposal will further safeguard the toll free text-enabling process, and fulfill our statutory mandate that numbers be made available on an equitable basis.⁵ We also believe this additional step are necessary to avoid any confusion about the status of a toll free number and to prevent any potential abuse, such as spoofing or fraud. We seek comment by interested stakeholders on this proposed rule.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1, 4(i), 201(b), and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201(b), and 251(e)(1).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small-business concern” under the

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 845 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 47 U.S.C. § 251(e).

⁵ See 47 U.S.C. § 251(e).

⁶ See 5 U.S.C. § 603(b)(3).

⁷ See 5 U.S.C. § 601(6).

Small Business Act.⁸ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.¹⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹¹ These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹² Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ Nationwide, as of 2007, there were approximately 1,621,215 small organizations.¹⁴ Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.¹⁶ We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”¹⁷ Thus, we estimate that most governmental

⁸ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ See 15 U.S.C. § 632.

¹⁰ See 5 U.S.C. § 601(3)-(6).

¹¹ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹² See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹³ 5 U.S.C. § 601(4).

¹⁴ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

¹⁵ 5 U.S.C. § 601(5).

¹⁶ U.S. Census Bureau, *Statistical Abstract of the United States: 2012* at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

¹⁷ The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, *City and Town Totals Vintage: 2011*,

jurisdictions are small.

6. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁸ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁹ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

7. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.²⁰ According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.²¹ The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

8. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.²² According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000

(Continued from previous page) _____
<http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

¹⁸ U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017).

¹⁹ 13 CFR § 121.201 (NAICS Code 517110).

²⁰ 13 CFR § 121.201 (NAICS Code 517110).

²¹ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

²² 13 CFR § 121.201 (NAICS Code 517110).

employees.²³ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.²⁴ Of this total, an estimated 1,006 have 1,500 or fewer employees.²⁵

9. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.²⁷ Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

10. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”²⁸ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is

²³ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

²⁴ See Fed. Commc’ns Comm’n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

²⁵ Fed. Commc’ns Comm’n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

²⁶ 13 CFR § 121.201 (NAICS Code 517110).

²⁷ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

²⁸ 5 U.S.C. § 601(3).

not “national” in scope.²⁹ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.³⁰ U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³¹ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.³² Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rule.

12. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.³³ Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁴ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

13. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.

²⁹ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

³⁰ 13 CFR § 121.201 (NAICS Code 517110).

³¹ See U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

³² See *Trends in Telephone Service*, at tbl. 5.3.

³³ U.S. Census Bureau, 2012 NAICS Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017).

³⁴ 13 CFR § 121.201 (NAICS code 517911).

Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.³⁵ The SBA has developed a small business size standard for the category of Telecommunications Resellers.³⁶ Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁷ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

14. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.³⁸ Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.³⁹ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁴⁰ Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the Second Further Notice.

15. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.⁴¹ According to the Commission's Form 499 Filer Database, 500 companies reported

³⁵ U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017) (NAICS 517911 Telecommunications Resellers).

³⁶ 13 CFR § 121.201 (NAICS code 517911).

³⁷ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

³⁸ 13 CFR § 121.201 (NAICS code 517110).

³⁹ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁴⁰ *Trends in Telephone Service*, at tbl. 5.3.

⁴¹ 13 CFR § 121.201 (NAICS code 517110).

that they were engaged in the provision of prepaid calling cards.⁴² The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

16. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁴³ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴⁴ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁴⁵ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁴⁶ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

17. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.⁴⁷ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.⁴⁸ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

18. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services

⁴² See Fed. Commc'ns Comm'n, *FCC Form 499 Filer Database*, <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited June 20, 2017).

⁴³ NAICS Code 517210. See U.S. Census Bureau, *American Fact Finder—About the Data*, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

⁴⁴ 13 CFR § 121.201 (NAICS code 517210).

⁴⁵ U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS 51720, “Subject Series - Estab & Firm Size: Employment Size of Establishments for the U.S.: 2012”).

⁴⁶ Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁷ See Fed. Commc'ns Comm'n, *Universal Licensing System*, <http://wireless.fcc.gov/uls> (last visited June 20, 2017). For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁴⁸ *Trends in Telephone Service*, at tbl. 5.3

(WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁴⁹ The SBA has approved these definitions.⁵⁰

19. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁵¹ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁵² According to Commission data, 413 carriers reported that they were engaged in wireless telephony.⁵³ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

20. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g. limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.⁵⁴ The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.⁵⁵ The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees.⁵⁶ Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

21. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a “small cable company” is one serving

⁴⁹ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

⁵⁰ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998).

⁵¹ 13 CFR § 121.201 (NAICS code 517210).

⁵² *Id.*

⁵³ *Trends in Telephone Service*, at tbl. 5.3.

⁵⁴ See U.S. Census Bureau, 2012 NAIC Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515210&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017) (2012 NAICS code, “515210 Cable and Other Subscription Programming”).

⁵⁵ 13 CFR § 121.201 (NAICSs Code 515210).

⁵⁶ See U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS code 51510, “Estab & Firm Size: Employment Size of Establishments for the U.S.”).

400,000 or fewer subscribers nationwide.⁵⁷ Industry data indicate that there are currently 4,600 active cable systems in the United States.⁵⁸ Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard.⁵⁹ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁶⁰ Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁶¹ Thus, under this standard as well, we estimate that most cable systems are small entities.

22. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁶² There are approximately 52,403,705 cable video subscribers in the United States today.⁶³ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁶⁴ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁶⁵ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁶⁶ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

23. *All Other Telecommunications.* The "All Other Telecommunications"

⁵⁷ 47 CFR § 76.901(e).

⁵⁸ This figure was derived from an August 15, 2015 report from the FCC Media Bureau, based on data contained in the Commission's Cable Operations and Licensing System (COALS). See <http://www.fcc.gov/coals>.

⁵⁹ Data obtained from SNL Kagan database on April 19, 2017.

⁶⁰ 47 CFR § 76.901(c).

⁶¹ August 5, 2015 report from the FCC Media Bureau based on its research in COALS. See <http://www.fcc.gov/coals>.

⁶² See 47 CFR § 76.901(f) & nn.1-3.

⁶³ See SNL Kagan at <http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx> (subscription required).

⁶⁴ 47 CFR § 76.901(f) & nn.1-3.

⁶⁵ See SNL Kagan at http://www.snl.com/interactivex/TopCable_MSOs.aspx (subscription required).

⁶⁶ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 CFR § 76.901(f).

industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁶⁷ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁶⁸ For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁶⁹ Thus a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

24. The NPRM proposes and seeks comment on a rule change that will affect toll free text-enablement. In particular, we propose a revised definition for the Service Management System Database section 52.101(d).⁷⁰ The NPRM seeks comment on this proposal.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.⁷¹

26. In this NPRM, we propose that a toll free subscriber must inform its RespOrg of its authorization to text-enable a toll free number and that the RespOrg must update the appropriate records in the SMS Database.⁷² We believe this proposal will further safeguard the toll free text-enabling process, and fulfill our

⁶⁷ U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017) (enter 2012 NAICS code 517919).

⁶⁸ 13 CFR § 121.201 (NAICS Code 517919).

⁶⁹ U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table (2012 NAICS Code 517919, “Estab & Firm Size: Receipts Size of Firms for the U.S.”).

⁷⁰ See Appx. A, proposed 47 CFR § 52.101(g).

⁷¹ 5 U.S.C. § 603(c)(1)-(c)(4).

⁷² See 47 U.S.C. § 251(e).

statutory mandate that numbers be made available on an equitable basis.⁷³ The NPRM also seeks comment on administrative issues to implement the proposed registry that would not be overly burdensome on RespOrgs and messaging providers. For example, we seek comment on whether toll free texting information should be included in the SMS Database or if there should be a single toll free texting registry, as opposed to multiple registries, to limit burden on RespOrgs and messaging providers some of which may be small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

27. None.

⁷³ See 47 U.S.C. § 251(e).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Text-Enabled Toll Free Numbers*, WC Docket. No. 18-28.

In a classic 2001 Thanksgiving episode of *The West Wing*, President Bartlett complains to Charlie about the absence of a “hotline you can call with questions about cooking turkey. A special toll free number where the phones are staffed by experts.” When Charlie informs the President that such a service already exists in the form of the Butterball Hotline, Bartlett rejoices.¹ Seventeen years after that episode, the Butterball Hotline still answers over 100,000 turkey-related questions each holiday season. And life has gotten even better, at least from the fictitious President’s perspective: Butterball has also enabled a toll free phone number to receive and respond to texts.² President Bartlett would be very proud indeed.

The innovation of text-based turkey advice seems to suggest a growing trend toward toll free text messaging. This trend can be consumer-friendly. For instance, the retailer Land’s End already allows customers to text its toll free number, which many may prefer to the hold music you typically get on a phone call. And toll free texting can also help businesses become more efficient. For example, the company Call-Em-All allows employers to text its workforce using toll free numbers to manage schedules or broadcast last-minute shift needs. With rapid developments in artificial intelligence, these text interactions will likely lead to better service for consumers and productivity gains for businesses.

But there’s a fly in the ointment: One person’s number can become another person’s platform. If a scofflaw can text-enable a phone number without the knowledge or permission of the person who holds that number, the scofflaw could use that texting capability to perpetrate fraud, undermining public confidence in toll free texting.

How do we solve that problem? It’s a simple, free-market solution: more secure and better-defined property rights. We need to make clear who can—and by implication, who cannot—text-enable a toll free number. That’s what this declaratory ruling does. We make absolutely clear that a toll free subscriber—and nobody else—must authorize text-enabling of a number. (This is particularly important for toll free subscribers using that number for voice calls.) With that clear, the *Notice* then seeks public input on what else, if anything, the FCC should do to promote a competitive and innovative marketplace in text messaging services.

Thank you to the staff who have worked on this item: Bill Andriele, Alex Espinoza, Heather Hendrickson, Dan Kahn, Kris Monteith, Eric Ralph, and Michelle Sclater in the Wireline Competition Bureau; Terry Cavanaugh, Richard Mallen, and Linda Oliver in the Office of General Counsel; Garnet Hanly, Michael Janson, Elizabeth McIntyre, and Jennifer Salhus in the Wireless

¹ *The West Wing: The Indians in the Lobby* (Nov. 21, 2001), available at <https://www.youtube.com/watch?v=zQsvcs9IB8A>.

² See Kate Taylor, For the first time ever, you’ll be able to text Butterball’s turkey help line, *Business Insider* (Oct. 31, 2016), available at <http://www.businessinsider.com/butterball-help-line-adds-texting-2016-10>.

Telecommunications Bureau; and Kenneth Carlberg, Debra Jordan, Jane Kelly, Lauren Kravetz, and Anita Patankar-Stoll in the Public Safety and Homeland Security Bureau.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Text-Enabled Toll Free Numbers*, WC Docket. No. 18-28.

As consumers have shifted from calling to texting, businesses have begun text-enabling their toll-free numbers as another means to engage with their customers. The Declaratory Ruling clarifies that the subscriber (the business that holds the toll-free number) is the only entity that can authorize the text-enabling of the number. I generally support the outcome but want to make two points about the Notice.

First, it is not clear, based on the present record, that there is a problem that requires regulatory intervention. The Notice points to a handful of instances where a number may have been text-enabled without a subscriber's authorization, but those examples are contested. Therefore, the record generated in this proceeding will be valuable in assessing the *need* for Commission action. If this is a hypothetical concern or a limited problem that could be addressed through industry best practices, then I will be reluctant to want to expand or create number registries, which would impose new burdens on subscribers and costs on users.

Second, because the Commission has not classified text messaging, the Notice is forced to explain how the administration of text-enabled toll-free numbers does not prejudge the regulatory status of text messaging services. I would like to end the regulatory tap dancing and take the affirmative step of declaring text messaging to be an interstate, information service. To the extent consumers use SMS, it is typically part of an all-distance, unlimited bundle. Increasingly, however, consumers are opting to use a wide range of over-the-top messaging apps. According to one report, just the combination of the apps "[Facebook] Messenger and WhatsApp process 60 billion messages a day, three times more than SMS" – and that was back in 2016.¹ It makes no sense to begin placing antiquated regulatory burdens on a legacy service when consumers are already shifting to new forms of messaging that we have no authority to regulate. I hope the Commission will take up this issue in the near future.

I vote to approve.

¹ Lauren Goode, The Verge, *Messenger and WhatsApp Process 60 Billion Messages a Day, Three Times More Than SMS* (April 12, 2016), <https://www.theverge.com/2016/4/12/11415198/facebook-messenger-whatsapp-number-messages-vs-sms-f8-2016>; see also Deloitte, *Short Messaging Services versus Instant Messaging: Value Versus Volume* (2014), <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/technology-media-telecommunications/deloitte-au-tmt-short-messaging-services-versus-instant-messaging-011014.pdf>.