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June 1, 2018

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

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

Dear Ms. Dortch:

Zipwhip, Inc., by its undersigned counsel, hereby gives notice that on May 31, 2018, it met with Amy Bender, Legal Advisor, Wireline to Commissioner O'Rielly, to discuss the Circulation Draft item in the above-captioned docket.¹ In attendance on behalf of Zipwhip were John Lauer and James Lopic (both participating by phone). Steven A. Augustino and Avonne S. Bell of Kelley Drye & Warren LLP attended in person.

In the meeting, Zipwhip explained that it has brought tremendous innovation to the texting market, which is growing and thriving in the absence of FCC regulation. Zipwhip explained that nearly two million toll free numbers have been text-enabled and millions more landline and VoIP numbers have texting capabilities, all without any need for FCC regulation. Zipwhip also explained that it has in place adequate controls to ensure that the subscriber properly authorizes the text-enablement of a number and described the controls that Zipwhip uses to verify subscriber control and authorization. The discussion was consistent with the following previous filings:

¹ Text-Enabled Toll Free Numbers, Declaratory Ruling and Notice of Proposed Rulemaking, WC Docket No. 18-28, FCC-CIRC 1806-08 (for consideration at the June 7, 2018 Open Meeting) ("Circulation Draft").

Ms. Marlene H. Dortch

June 1, 2018

Page 2

- The Truth About Texting on Toll Free White Paper:
<https://www.fcc.gov/ecfs/filing/1118133517699>
- Zipwhip Opposition to Somos Petition:
<https://www.fcc.gov/ecfs/filing/1206154248345>
- Zipwhip Reply Comments on Somos Petition:
<https://www.fcc.gov/ecfs/filing/1220047594165>

Regarding the Circulation Draft, Zipwhip explained that it already follows the principle that the subscriber – and only the subscriber – can authorize the text-enablement of a number. While the declaratory ruling portion of the Circulation Draft would confirm that the RespOrg is not the subscriber and cannot approve or disapprove of the text-enablement of a toll free number, the declaratory ruling does nothing more than confirm the status quo in the market today.

Zipwhip urged the Commission to proceed cautiously before interjecting regulation in a functioning market. As the Commission recently commented:

Utility-style regulation is particularly inapt for a dynamic industry built on technological development and disruption. ... Within the communications industry, it is apparent that the most regulated sectors, such as basic telephone service, have experienced the least innovation, whereas those sectors that have been traditionally free to innovate, such as Internet service, have greatly evolved. In the communications industry, incumbents have often used Commission regulation under the direction of the “public interest” to thwart innovation and competitive entry into the sector and protect existing market structures.²

The Commission’s statement about Internet service is equally true in the texting market. Today, subscribers can text-enable all types of non-wireless numbers, including traditional landline 10-digit numbers. Businesses are rapidly adopting texting for their business lines, responding to consumers’ desires about when and how they wish to communicate. Moreover, there are multiple ways to send messages, not just the use of the SMS technology commonly associated with texting. Dozens of OTT texting providers and emerging services such as RCS technology all provide messaging, yet the Circulation Draft singles out only one technology (SMS) and one

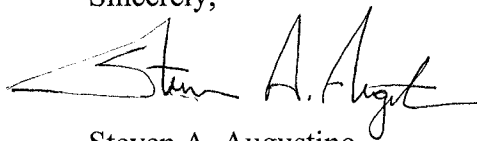
² Restoring Internet Freedom, Declaratory Ruling, Report and Order and Order, 33 FCC Rcd. 311, 369 (¶ 100) (2018).

Ms. Marlene H. Dortch
June 1, 2018
Page 3

service (toll free) and proposes regulation of that service. Zipwhip argued that Commission rules would impede the market and improperly pick winners and losers in a competitive environment.

Zipwhip recommended that the Commission proceed via a Notice of Inquiry instead of a Notice of Proposed Rulemaking. A Notice of Inquiry “is designed primarily for fact gathering, a way to seek information about a broad subject or generate ideas on a specific issue.”³ Because the market is developing rapidly, because unregulated alternatives exist and because the Commission has not even decided the classification of texting services,⁴ let alone adopted any rules relating to the provision of texting services, additional fact gathering is advisable before any course of action is proposed. Zipwhip recommended edits to the Circulation Draft, including at paragraphs 3, 13, 25 and 26, to guide the fact gathering process. Specifically, Zipwhip recommended questions be added to the draft to identify the purpose of the proposal described in the Circulation Draft, to identify how the proposal achieves the purported goals, to identify the costs/benefits of that proposal, and to identify the scope of the Commission’s authority to act regarding toll free numbers.

Sincerely,



Steven A. Augustino

Counsel for Zipwhip

cc: Amy Bender

³ Federal Communications Commission, *Understanding FCC Processes*, available at <https://www.fcc.gov/general/understanding-fcc-processes> (last visited May 29, 2018).

⁴ See *In the Matter of Petition of Public Knowledge et. al for Declaratory Ruling Stating Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules*, filed Dec. 11, 2007 (“Joint Petition”); *In the Matter of Petition of Twilio Inc. for an Expedited Declaratory Ruling Stating That Messaging Services Are Title II Services*, filed August 28, 2015 (“Twilio Petition”). Both petitions remain pending before the Commission, ten and nearly three years, respectively, after their submission.