

July 1, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-B204
Washington, D.C. 20554

Re:

WT Docket No. 08-7, Petition of Twilio Inc. for an Expedited Declaratory Ruling Stating That Messaging Services Are Title II Services;
CC Docket No. 95-155, Toll-Free Service Access Codes

Dear Ms. Dortch:

Somos files these comments in the above-captioned proceeding to respond to the May 26, 2016 Comments filed by Zipwhip, Inc.¹

Zipwhip's comments do not effectively refute the fact that it has engaged in the behavior detailed for the Commission at the April 22, 2016 meeting between Commission staff and Toll-Free texting service providers, which was captured in the Somos April 26, 2016 ex parte filing.²

Somos also takes exception to the claim that Zipwhip knows of only one case where Zipwhip text enabled a Toll-Free Number ("TFN") without the subscriber's or Resp Org's knowledge. That is simply not true. As recently as May, Somos became aware of two different Resp Orgs that found dozens of their numbers text-enabled without permission from the subscriber or the Resp Org. A redacted version of one of these email conversations is attached as Exhibit A.³ These Resp Orgs contacted Somos to help deactivate the texting capabilities on these TFNs. Over a number of years, Zipwhip had text enabled dozens of high value (with repeating numbers or that spell something memorable) TFNs belonging to these two Resp Orgs. According to the Resp Orgs, none of the customers associated with those TFNs had authorized any third party to text-enable numbers on their behalf. In fact, the Resp Org itself was the user of some of those TFNs.⁴

¹ Comments of Zipwhip in Docket 08-7, filed May 26, 2016.

² Ex Parte filing of Somos, Inc., in Docket 08-7, filed April 26, 2016.

³ Somos has been given permission by one Resp Org to provide this redacted email chain in this filing. The other Resp Org preferred that their emails not be part of this filing.

⁴ Zipwhip's email claims that no texting originated on any of those numbers. That fact, however, does not mean that texts were not received on those numbers and routed to third parties. Zipwhip has used information about terminating texts to TFNs not yet text-enabled by subscribers as a marketing tool. See Exhibit B.

Zipwhip's internal process for verifying who has the right to text-enable a TFN does not take into account how the Toll-Free industry works and completely disregards the role of the Resp Org. The FCC has designated Resp Orgs to be the agent on behalf of Toll-Free subscribers to obtain and manage TFNs. 47 CFR Section 52.101(b) defines a Resp Orgs as, "The entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber." In that role, the Resp Org is the entity responsible for interacting with the SMS/800 platform that controls the reservations for TFNs. Non-Resp Org end users do not have access to the SMS/800 platform. That is why the CTIA SMS Interoperability Guidelines specified that the Resp Org should be notified of the request to text-enable a TFN and have the ability to accept or reject that request on behalf of the subscriber.⁵

The Resp Org is the only entity that knows and understands the true subscriber of any TFN. Many TFNs are used in ways where the entity receiving phone calls on a TFN is not the actual subscriber. Toll-Free routing permits shared use of a TFN in different regions, depending on the origination point of the inbound call. For example, 1-800-PAVEMENT is a shared use TFN for driveway paving businesses. Calls are routed based on where the call originated to a contractor that does business in the caller's area. If 1-800-PAVEMENT were text-enabled by one of its dozens of end users, all texts coming into that number would be routed to that one company, no matter where the text originates or who the intended recipient is.

Another example where the entity believes they are the end-user/ subscriber and may not be is in instances where TFNs are used in short-term marketing campaigns.⁶ An advertising company may keep a segment of their TFNs for use in short-term advertising campaigns, whether on the Internet, TV, or otherwise. Were one of its clients to text-enable that TFN, texts would be routed to that client and continue to be long after that TFN is being used for another client. And the advertising company would never know.

Zipwhip has also engaged in other behavior to the detriment of Toll-Free subscribers and Toll-Free texting service providers. For example, Zipwhip refused to recognize an authorized change of service providers and blocked legitimate messaging traffic. Only after intervention by CTIA and Somos did Zipwhip finally relent and allow the messaging traffic to flow through to the legitimate and authorized customer. See Exhibit C, attached.

Zipwhip has also failed to recognize a legitimate authorization to provide text-

⁵ "4.4.3 Authority to Text-Enable 8XX Telephone Numbers

The authority to control voice telecommunications services and/or information services (e.g., SMS, MMS or future services) associated with an 8XX Telephone Number resides with the subscriber who is the holder of record of the toll-free voice Telephone Number ("holder"). To facilitate coordination with voice service on a given 8XX telephone number, it is recommended that *only the SMS/800 Responsible Organization (RespOrg) selected by the holder of that 8XX telephone number have the authority to text-enable 8XX Telephone Numbers solely at the direction of the holder of the 8XX telephone number.*" CTIA SMS Interoperability Guidelines, version 3.2.2, effective January 1, 2015. (Emphasis Added.)

⁶ Marketing and analytics has been the largest area of growth for TFNs in the past few years, and Somos estimates that this accounts for 15% to 20% of all TFNs currently in use in the US.

enablement services and refused to transport legitimate and authorized messaging traffic to TFNs. A request to text-enable a TFN was rejected by Zipwhip because it claimed to not have the current, legitimate routing and ownership information as recognized by the rest of the messaging ecosystem. CSF President, Steven Levinn, previously filed the email exchange surrounding this issue into the record in this docket.⁷

Further, the contention that those “complaining” about Zipwhip’s actions want to send commercial volumes of traffic via the SMS platform is incorrect. TFNs are used by everyone from individuals to large call centers. Texting to a TFN often replaces a phone call to an individual, small business, or customer service center. Those interactions are on a one-to-one basis that mirror Person-to-Person, or P2P communications.⁸ To arbitrarily decide that all texting to TFNs is commercial in nature with commercial volumes and traffic imbalances, thereby forcing that traffic into the more expensive commercial traffic category, ignores the reality of the way consumers use texting to TFNs.

Zipwhip also contends that “Zipwhip has non-exclusive agreements with major wireless operators to provide texting on toll-free and 10-digit phone numbers for A2P traffic.”⁹ In fact, no major carrier uses any other Intercarrier Vendor (ICV) for Toll-Free traffic. Indeed, Toll-Free is treated differently than all other texting traffic. While Zipwhip claims their agreements with the wireless carriers are not “squenching” competition, in reality, all Zipwhip’s retail competitors have no other choice but to get their Toll-Free texting traffic from Zipwhip as the designated Toll-Free texting ICV for the large wireless operators.

Due to the unique routing arrangements the large wireless carriers have with Zipwhip to route texts to TFNs, wireless subscribers are unable to tell whether or not their text reaches its intended destination. For example, Chairman Wheeler’s office at 202-418-1000 is not text-enabled. If a wireless subscriber attempts to text to that number, their wireless carrier will send back a message that lets the subscriber know that the text has not reached its intended destination. On AT&T’s network, a message similar to this will be returned to the subscriber: “1-202-418-1000 Error Invalid Number. Please re-send using a valid 10 digit mobile number or valid short code.” On Verizon’s network, the wireless subscriber will receive a message similar to this: “+1202-418-1000 is a landline #. Reply Y to send all TXT messages to this # as voice messages for 0.25/msg.+ std msg fee. Details @ vtext.com, TexttoLandline.”

However, should a wireless subscriber attempt to text to the Commission’s Toll-Free Number, 888-225-5322, which is also not text-enabled, no reject message is sent to the wireless subscriber. The wireless subscriber will assume that the text went through. This is true with every one of the more than 40 million TFNs in use today. With scores of federal and local agencies, emergency responders, relief agencies, and school systems using TFNs, the inability to know whether or not that text has not reached its intended destination could literally be a matter

⁷ Comments of Steven S. Levinn in Docket 08-7, filed March 8, 2016, attached hereto as Exhibit D.

⁸ Somos does not object to classifying traffic on TFNs as Application-to-Person, or A2P, should traffic volumes on TFNs reach commercial levels with a significant imbalance in sent texts to received texts.

⁹ Zipwhip Comments at 2.

of life and death. In addition, a business with a TFN that is not text-enabled could be losing its good reputation with consumers because the wireless subscriber has assumed the text has been received by the business, but the business did not respond back. The wireless subscriber does not know that the business does not subscribe to a Toll-Free texting service. This is bad for the business, bad for the wireless subscriber, and bad for the Toll-Free industry.

The above mentioned actions undermine the integrity of TFNs and harm consumers and end-users. Failure to resolve these issues in the Toll-Free texting ecosystem has led or could lead to the following harms:

- Consumer Protection: Lack of validation and controls invites opportunities for fraud and identity theft;
- Business Reputation: ‘Hijacking’ of texts by unrelated parties causes harm to Toll-Free subscribers’ businesses; and
- Toll-Free Number Integrity: Consumers and Toll-Free subscribers need to be assured that, no matter how a consumer wants to contact a Toll-Free subscriber – wireless, wireline, VoIP, or text – that the communication terminates with the legitimate Toll-Free subscriber.

We ask the Commission to take whatever measures are necessary to ensure the health of the Toll-Free texting ecosystem in order to protect consumers, TFN subscribers, and the Toll-Free industry. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joel Bernstein". The signature is written in a cursive, flowing style.

Joel Bernstein
Vice President, Regulatory and Public Policy, Somos, Inc.