

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Text Enabled Toll Free Numbers)	WC Docket No. 18-98
)	
Toll Free Service Access Codes)	WC Docket No. 95-155

OPENING COMMENTS OF BANDWIDTH INC.

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I. INTRODUCTION

Bandwidth Inc. (“Bandwidth”) files these comments in response to the questions and proposed rules in the above-captioned proceeding.¹ Among many other innovative and competitive service offerings, Bandwidth is a leading provider of RespOrg services. Bandwidth has been an innovator in the toll-free space supporting customers through software and business enterprise use cases for toll-free applications, including robust APIs that enable customers to procure and manage toll-free numbers and services. Bandwidth supports businesses across the U.S. as the managing RespOrg for nearly 3.7 million toll-free numbers. Bandwidth is also a leader in the effort to meet growing consumer demand for enterprise-level messaging services, where it sees great potential for unleashing valuable toll free texting applications of all sorts.

Bandwidth applauds the Commission’s Declaratory Ruling and accompanying *8YY Text Enablement NPRM* proposals for improving how end-users, messaging service providers and responsible organizations (“RespOrgs”) can properly register subscribers’ valid text enablement requests. Establishing clear process and procedure to manage toll-free number assignment data accurately is a fundamental and necessary underpinning for what promises to be exciting and growing market in the toll free service space. As currently configured however, the marketplace for text to toll-free (“TTF”) services is susceptible to abuse and error that are restricting growth and harming competition and consumers. Adopting rules that clearly establish how toll free numbers can be validly text-enabled will benefit consumers by spurring investment in truly innovative new services they want while simultaneously helping to protect them from fraud and abuse. Therefore, Bandwidth supports the Commission’s

¹ *In the Matter of Text-Enabled Toll Free Numbers and Toll Free Service Access Codes*; WC Docket No. 18-28, CC Docket No. 95-155 (rel. June 12, 2018) (“*8YY Text Enablement NPRM*” or “*NPRM*”).

² *8YY Text Enablement NPRM* at ¶ 25.

effort to restore the RespOrgs' important role in securely managing toll-free numbering resources.

II. THE STATUS QUO HARMS COMPETITION AND CONSUMERS – ALLOWING IT TO PERSIST SHOULD NOT BE AN OPTION

Bandwidth believes some of the most important questions set forth in the NPRM are those in paragraph 25 – *Maintaining Status Quo*.² Bandwidth knows that valid consumer demands are increasingly going unmet in the enterprise marketplace today due in large part to a fundamental lack of effective controls over how toll-free numbers are used for messaging services³. As was thoroughly detailed by Somos and others in the *Somos Declaratory Ruling Petition* proceeding⁴, there are numerous market failures that can be addressed by adopting standard industry processes and controls. In fact, the lack of controls in the TTF market critically threatens the long thriving toll-free voice market if left unaddressed. When originally establishing a toll-free administrator for toll-free numbers, the Commission found that the administration of the database should rest with a neutral third party.⁵ The Commission determined that an independent neutral third party would reduce the incentives to discriminate against other parties that offer toll-free services.⁶ Those prior findings retain

² 8YY Text Enablement NPRM at ¶ 25.

³ Bandwidth acknowledges and agrees with the Commission's statement of its legal jurisdiction pursuant to section 251(e)(1) of the Act at paragraph 26 of the NPRM and how it is limiting such jurisdiction in this proceeding to number administration matters. 8YY Text Enablement NPRM at ¶ 26.

⁴ *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) ("Somos Declaratory Ruling Petition").

⁵ See, e.g., *Provision of Access for 800 Service*, 8 FCC Rcd 1423, 1426-27, ¶ 29 (1993) (finding that in addition to neutrality, tariffing is important to ensure nondiscriminatory SMS access and at reasonable rates).

⁶ See *id.*

their merit today and should guide the consideration of whether straightforward number administration procedures should also be implemented for toll-free text enablement as well.

As the QSI Consulting white paper (“QSI White Paper”)⁷ thoroughly demonstrated, market failures abound in the current TTF ecosystem. Bandwidth and its customers have experienced these failures and abuse first hand. Unlike the marketplace for toll-free voice, the TTF marketplace is not only entirely unregulated by the Commission, as QSI Consulting has noted, it is “unique” that Zipwhip, Inc. (“Zipwhip”) solely aggregates and manages “practically 100 percent of the TTF traffic to and from their subscribers.”⁸ In view of Bandwidth’s direct operational experience in managing TTF traffic volumes at scale, allowing a single-source provider of critical traffic routing services to operate without some oversight or control has been a demonstrative failure that vastly limits the TTF ecosystem’s opportunity to serve consumers. Equally relevant here is that the traffic routing failures have been exacerbated by the obvious, and inherent conflict that Zipwhip is a direct competitor with other providers of TTF services, including Bandwidth.⁹ By definition, this structural, inherent commercial conflict of interest rules out any practical assurance of a neutral “referee” or and that TTF competition occurs on a level playing field. Presently RespOrgs and TTF competitors like the Bandwidth have no option but to (i) purchase TTF aggregator services from Zipwhip; (ii) then contend directly with Zipwhip’s TTF competitive service

⁷ See Letter from Joel Bernstein, Vice President, Regulatory Public Policy, Somos, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7, Attach. White Paper, Texting with Toll-Free Numbers: Old-School Market Failures Plagues a New-Age Market (filed Sept. 29, 2016) (“QSI White Paper”).

⁸ QSI White Paper, at 2.

⁹ See Letter from Steven A. Augustino, Counsel for Zipwhip, Inc., to Marlene Dortch, Secretary, FCC, WC Docket 08-7, Attach. White Paper, The Truth About Texting on Toll Free (filed Nov. 18, 2016) (“Zipwhip Paper”), at 9 (detailing when Zipwhip became the *de facto* exclusive aggregator for the nation’s five largest wireless carriers); Letter from Joel Bernstein, Vice President, Regulatory Public Policy, Somos, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7 (Apr. 26, 2016), at 2 (“Zipwhip, which competes with the Service Providers on a retail level, struck deals with the five largest wireless carriers that requires all texting to [toll-free numbers] to be routed through Zipwhip . . .”).

offerings with toll-free number user-customers; and all the while (iii) rely on Zipwhip's good graces and assurances to ignore its structural conflict of interest and act neutrally when aggregating and managing its competitor's TTF traffic, and not tamper, interfere or block third party TTF transmissions or otherwise use the sensitive and confidential customer data it to solicit customers of RespOrgs.

Certainly, impartiality is as important in the TTF marketplace as it is for toll free voice services. In fact, neutrality is likely more important in the TTF marketplace because the traffic routing is otherwise subject to a single bottleneck route to wireless end-users that utilize TTF services. The five largest wireless carriers in the U.S. essentially control 100% of the marketplace for wireless services as measured by connections and revenue.¹⁰ By entering into an exclusive relationship for TTF services, a bottleneck and bestowing unrestrained competitive advantages on one firm is created. As the exclusive aggregator for TTF services today, Zipwhip has unfettered access to and use of extremely sensitive confidential and competitive information in an environment that is entirely free of regulatory oversight. Abuse is a virtual certainty in such circumstances. As the sole bottleneck route in the marketplace, Zipwhip can obtain traffic-related information and use that information to target RespOrg customers.¹¹ These were the same concerns the Commission addressed by insisting on a neutral operator of the toll-free database for voice services.¹² The same principles apply with equal force now that toll-free numbers are also being used for TTF services.

¹⁰ See *Annual Report and Analysis of the Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 15-125, DA 15-1487, at Table II.B.1 (Dec. 23, 2015); White Paper at 6.

¹¹ See QSI White Paper at 15, 15 n.51 (citing Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc. to Marlene Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7, at 2 (filed Apr. 26, 2016) ("By virtue of their position, Zipwhip can see traffic destined for competitors and for network information (CPNI) to market their own services . . .").

¹² See *Provision of Access for 800 Service*, 8 FCC Rcd 1423, 1426-27, ¶ 29 (1993).

Lack of operational certainty in the marketplace for TTF services stifles investment, innovation and adoption. As the Declaratory Ruling and NPRM suggest, there are clear paths available to remedy the status quo and launch growth that supports pent up consumer demand. Toll-free number administration is well established and understood by toll-free voice market participants today and the industry's trial with not utilizing it for messaging services has clearly failed. Now, as proposed in the NPRM, it has become imperative that the Commission require that text enablement of toll free numbers follow the same basic operational processes that have worked so well for RespOrgs and subscribers of toll-free voice services.

III. RESPORGS MUST RETAIN SAME BASIC CONTROLS AS THEY CURRENTLY HAVE. RESPORG OVERSIGHT PROTECTS SUBSCRIBERS FROM RISKS OF ERROR AND ABUSE.

It is critical to recognize that TTF functionality is not occurring in a vacuum. Many toll-free users have invested significant capital and developed critical business practices around toll-free voice numbers. In the toll-free voice services ecosystem, RespOrgs are responsible for managing the records necessary to route toll-free traffic and are the only entities authorized to access the relevant database systems to add new entries or modifying existing records.¹³ Circumventing standard industry practices and cutting RespOrgs out from the TTF enablement process, has led to numerous problems. The failure to include the RespOrg in the TTF process to date has allowed unverified third parties to claim control over toll-free numbers to which they may have no rights. Shared use, sophisticated routing, and short-term use toll-free numbers also present important issues that require careful

¹³ See *Toll Free Service Access Codes*, Notice of Proposed Rulemaking, 10 FCC Rcd 13692, 13694 (1995); 47 C.F.R. § 52.10(b); *Provision of Access for 800 Service*, Order, 9 FCC Rcd 1423, 1425 (1993).

consideration of current business practices in the TTF market. The nature of the harms that arise from slamming, cramming, and hijacking have been well documented by the Commission since the introduction of consumer choice and number porting that came along with the break-up of “Ma Bell”¹⁴ and are clearly consumer protections worth continuing.

Toll-free subscribers have strong interests in controlling the communication channel they have invested in and in protecting their business reputation and customers.¹⁵ Yet, in today’s market, a TFN customer is unacceptably vulnerable to fraud and abuse. RespOrgs have found that many of the toll-free numbers that they manage were TTF enabled without their knowledge.¹⁶ A typical toll-free customer like a bank and its customers can easily fall victim to financial fraud and abuse should the bank’s toll-free numbers be hijacked for texting communications in a separate channel than the bank’s established toll-free voice channel. As QSI was able to readily demonstrate, due to its exclusive arrangement with wireless carriers and the lack of industry oversight, Zipwhip will independently activate TTF functionality for an unrelated third party without informing the RespOrg that manages the resource for the legitimate end user.¹⁷ In this way, Zipwhip effectively ports away (a.k.a. “slams”) the TTF functionality without the knowledge of the TTF end user and the RespOrg.¹⁸ This situation puts RespOrgs in the untenable position of having to explain to their customers that while they have invested in marketing dollars and worked with the

¹⁴ See Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (1982), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (“MFJ”); *Policies and Rules Concerning Changing Long Distance Carriers*, Report and Order, 7 FCC Rcd. 1038 (1991) (FCC anti-slaming rules). See, e.g., *Cellco Partnership d/b/a Verizon Wireless, Unauthorized Third-Party Billing Charges*, Order, File No. EB-TCD-14-00016543 (rel. May 12, 2015) (a more recent enforcement decision concerning mobile carrier cramming).

¹⁵ See *8YY Text Enablement NPRM* at FN 40 (quoting Letter from Jared Lawrence, Vice President, Revenue Services, Duke Energy).

¹⁶ Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc. to Marlene Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7, at 1 (filed July 1, 2016).

¹⁷ See generally White Paper.

¹⁸ Letter from John Evancie, Vice President, 800 Response Information Services to Marlene Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7, at 1 (filed Oct. 10, 2016).

RespOrg to enable toll-free services, the RespOrg cannot control unverified use of toll-free numbers. It also provides an opportunity for Zipwhip to leverage its exclusive arrangement with the major wireless carriers to lure customers away from RespOrgs as it is the only provider that can guarantee exclusive TTF use of the numbering resource.¹⁹

Fortunately, there are well-established systems, process and procedures that already exist that can be leveraged to more effectively manage these risks. The toll-free number registry should be able to be modified relatively easily to account for valid subscriber requests to text enable their numbers as well. Bandwidth does not believe that a separate registry is necessary or appropriate, but rather the current toll-free number administration systems should be utilized to capture both voice and text enablement data in one location, if perhaps in separate fields. Further, current rules appointing RespOrgs as the only entity allowed to manage toll-free records should apply equally in a TTF environment as well. As Somos suggests, “[t]he RespOrg is the only entity that knows and understands the true subscriber of any [toll-free number].”²⁰ Maintaining similar practices and procedures for subscribers and RespOrgs to what they are accustomed in the voice services space, rather than enabling exclusive unregulated arrangements established by private actors with unmitigated market power, will advance essential competitive and consumer protection norms.

¹⁹ See Somos April Ex Parte, at 2 (“[Zipwhip has] [a]ttempted to take retail customers away from other Service Providers by stating that their current Service Provider could not guarantee the traffic will not be cut off [.]”).

²⁰ Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc. to Marlene Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7, at 1 (filed July 1, 2016)

IV. CONCLUSION

The Commission should confirm that effective toll-free number administration is critical to ensuring the viability of competition and consumer protection in the messaging ecosystem. As proposed in the NPRM, the Commission should require that any TTF enablement be done through the well-established channels of the industry's centralized independent registry where RespOrgs are explicitly part of the text enablement process according to valid subscriber choice. The failures of the status quo are abundantly clear by now. The distorted and unprotected marketplace that has been created to date has failed to meet consumer demands and increased costs while exposing participants to fraud and abuse. The exclusive arrangement between Zipwhip and the wireless carriers is stifling competition. For all of these reasons, the Commission should adopt rules that enable consumer choice and protect the ecosystem by requiring reasonable process and procedures to enable and record valid subscriber choices.

In addition to distorting the TTF marketplace and harming competition, Zipwhip's business practices are disrupting long-standing industry practices to the detriment of toll-free numbering resource users. Users that may have invested significant capital in branding their business and associating a toll-free number resource with it cannot control how it is used for text messaging purposes. This negatively impacts the ability of users to control their business reputation. It can also lead to an unauthorized porting of the texting functionality from the legitimate user of the resource to an unrelated third party. Even worse, unrelated third parties may be depending on the chaos injected by Zipwhip in the TTF-enablement market to use such resources fraudulently. Zipwhip's business practices negatively impact shared use toll-free numbers as well as those that are used for a specific purpose and limited duration.

Accordingly, the Commission should grant Somos's petition and require that any TTF enablement include RespOrgs as part of the activation process.

Respectfully submitted,

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