

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

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

REPLY COMMENTS OF CTIA

CTIA respectfully submits these reply comments in response to parties' filings addressing the Federal Communications Commission's (Commission's) *Declaratory Ruling and Notice of Proposed Rulemaking (Declaratory Ruling and NPRM, respectively)* in the above-captioned dockets.¹

I. Introduction and Summary.

The record in this proceeding demonstrates that the *Declaratory Ruling* is sufficient to protect toll-free subscribers in the vibrant, competitive and innovative messaging marketplace, and that further Commission action is unnecessary to maintain the rights of toll-free subscribers and protect consumers from unwanted messages.

Generally, the initial comments in this proceeding continue to demonstrate that industry best practices such as CTIA's *Messaging Principles and Best Practices*, along with self-regulation, facilitate a vibrant, innovative and competitive messaging marketplace. The record also continues to show no meaningful evidence of market failure, as toll-free subscribers are able

¹ *Text-Enabled Toll Free Numbers et al.*, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 18-77, WC Docket No. 18-28, CC Docket No. 95-155 (rel. June 12, 2018) (collectively, *Declaratory Ruling and NPRM* for purposes of footnote citations); *see also Wireline Competition Bureau Announces Comment and Reply Comment Dates for Notice of Proposed Rulemaking on Text-Enabled Toll Free Numbers*, Public Notice, DA 18-765, WC Docket No. 18-28 *et al.* (WCB rel. July 24, 2018) (announcing deadlines for filings in response to the *NPRM*).

to control how their numbers are text-enabled, and consumers remain generally free of unwanted messaging traffic. As CTIA has amply demonstrated in past filings, text messaging is an interstate information service – and commenters agree that the *NPRM*'s proposal to impose regulations in the messaging market would be inconsistent with the Commission's light-touch regulatory approach to interstate information services.

Insofar as there is disagreement in the record, it reflects divergent views about the appropriate role of toll-free number Responsible Organizations (RespOrgs) in the messaging marketplace. Notably, a number of commenters raise concerns about extending the RespOrgs' current exclusive management of toll-free telephone numbers for voice telecommunications services into the competitive text messaging marketplace. Further, commenters suggest that the *NPRM*'s proposals would be neither simple nor efficient, particularly for the toll-free subscribers the proposed regulations seek to protect.

For all of these reasons, the Commission should eschew adopting an unnecessary and burdensome set of new rules on toll-free subscribers seeking to expand the use of their toll-free number to messaging, and instead allow the market to continue to deliver innovative messaging services while protecting consumers from unwanted messages.

II. The Record Demonstrates that the *Declaratory Ruling* Is Sufficient to Protect Toll-Free Subscribers in the Vibrant, Competitive and Innovative Messaging Marketplace.

A. The Comments Demonstrate Broad Support for the Commission's *Declaratory Ruling*.

The initial comments in response to the *NPRM* demonstrate overwhelming support for the *Declaratory Ruling* regardless of the commenters' position on the proposals in the *NPRM*.

For example, Bandwidth “applauds the Commission’s Declaratory Ruling,”² and CSF lauds the Commission for “clarify[ing] the rights of toll free subscribers.”³ Further, ZipWhip notes that “the *Declaratory Ruling* eliminates any potential disputes as to the authority to text-enable a number,”⁴ and AT&T confirms that the *Declaratory Ruling* takes “the important step of codifying the principle that messaging providers have known and followed – that a toll free number can be text enabled only with the subscriber’s prior authorization.”⁵

Indeed, as CTIA observed in its initial comments, the *Declaratory Ruling* correctly recognizes that toll-free telephone number subscribers have the exclusive right to text-enable their toll-free number.⁶ This approach formalizes the industry’s long-standing self-regulatory practice, as reflected in CTIA’s *Messaging Principles and Best Practices*⁷ – thereby ensuring optimal pro-market and pro-consumer outcomes.⁸

² Opening Comments of Bandwidth Inc., WC Docket No. [sic] 18-98, at 1 (filed Aug. 23, 2018) (Bandwidth Comments).

³ Comments of CSF HOLD CO, WC Docket No. 18-28 *et al.*, at 2 (filed Aug. 23, 2018) (CSF Comments) (“In its recent Declaratory Ruling in this proceeding, the Commission appropriately held ‘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.’”)

⁴ Comments of Zipwhip, Inc. on Declaratory Ruling and Notice of Proposed Rulemaking, WC Docket No. 18-28 *et al.*, at 4-6 (filed Aug. 23, 2018) (Zipwhip Comments) (explaining how “the *Declaratory Ruling* eliminates any potential disputes as to the authority to text-enable a number” and “commend[ing] the Commission’s decision”).

⁵ Comments of AT&T Services Inc., WC Docket No. 18-28 *et al.*, at 1 (filed Aug. 23, 2018) (AT&T Comments).

⁶ CTIA Comments at 2, 5.

⁷ CTIA, *Messaging Principles and Best Practices* (Jan. 19, 2017), <https://api.ctia.org/docs/default-source/default-document-library/170119-ctia-messaging-principles-and-best-practices.pdf> (*Messaging Principles*).

⁸ CTIA Comments at 6-8.

B. The Record Continues to Demonstrate That Industry Best Practices and Self-Regulation Facilitate a Competitive and Innovative Messaging Marketplace.

The record also shows that the messaging marketplace is competitive and functioning efficiently, without additional regulations. As commenters rightly demonstrate, the messaging market, including text-enabled toll-free numbers, is a vibrant ecosystem with competitors seeking to engage in “cost effective, innovative, and transformational communications solutions” to deliver messages that consumers want.⁹ The evidence of a robust market without signs of systemic problems demonstrates the positive impact of CTIA’s *Messaging Principles* – which encourage ecosystem participants to take steps to ensure the validity of subscriber authorizations to text-enable toll-free telephone numbers.¹⁰

Moreover, the record continues to show no meaningful evidence of market failure, as toll-free subscribers are able to control how their numbers are text-enabled and consumers remain generally free of unwanted messaging traffic. As commenters note, “there is absolutely no empirical evidence that the toll-free texting marketplace is exposed to fraud or is a market failing in any way.”¹¹ Further, TEN DIGIT explains that “[a] good indicator to any regulator that the market is failing is the number of customer complaints ... [w]here this a pressing problem, supporting data would be simple to provide and compelling to an argument.”¹² Indeed, it is telling that *no* parties in initial filings made any specific allegations of market failure whatsoever.

⁹ Comments of TEN DIGIT Communications LLC, WC Docket No. 18-28 *et al.*, at 1 (filed Aug. 23, 2018) (TEN DIGIT Comments); *see also* AT&T Comments at 7-8 (describing in part how “industry innovation has worked and will continue to work” in the toll-free texting marketplace).

¹⁰ *See, e.g.*, Zipwhip Comments at 7; AT&T Comments at 7.

¹¹ TEN DIGIT Comments at 2-3; *see also* AT&T Comments at 2-3 (“There is no market failure that justifies imposing new subscriber authorization regulation, third-party intermediaries like RespOrgs, or a separate registry on the messaging industry.”).

¹² TEN DIGIT Comments at 2-3.

As Chairman Pai and other Commission leaders have rightfully and repeatedly stressed, only true market failure warrants intervention by regulatory fiat.¹³

Insofar as there is disagreement in the record, it reflects divergent views about the appropriate role of RespOrgs in the messaging environment. However, these divergent views provide additional evidence that further Commission action in this proceeding could have unintended consequences that may hinder the evolving use of toll-free numbers for messaging.

At a fundamental level, CTIA's *Messaging Principles* recognize that RespOrgs have a particular role in the toll-free voice telecommunications market and, for that reason, encourage transparency to RespOrgs about toll-free numbers that have been enabled for text messaging by subscribers.¹⁴ However, some commenters, particularly entities associated with RespOrgs, encourage the Commission to extend the RespOrgs' current exclusive management of toll-free numbers in the voice telecommunications market into the messaging market through regulation.

¹³ See, e.g., Ajit Pai, Chairman, FCC, Remarks on Restoring Internet Freedom, at 3 (Nov. 28, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1128/DOC-347980A1.pdf (emphasizing the need for an approach to regulation “based on actual market failure or anticompetitive conduct”); Brendan Carr, *The FCC's Open Internet Order: A Cautionary Tale for Regulators*, DIGITAL POST (Nov. 12, 2015), <http://www.thedigitalpost.eu/2015/channel-future-of-the-internet/the-fcc-open-internet-order-a-cautionary-tale-for-regulators> (“In the absence of any market failure, consumers are far better served by policies that promote competition.”); *Protecting and Promoting an Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, 5658 (2014) (Dissent of Commissioner O’Rielly) (“before taking any action on any issue, the Commission should have specific and verifiable evidence that there is a market failure”); see also Comments of the Free State Foundation, WC Docket No. 18-28 *et al.*, at 3 (filed Aug. 23, 2018) (FSF Comments) (“It should be a matter of ‘first principles’ that the Commission not impose new regulations absent a clear showing of need.”); *id.* at 3-4 (quoting Commissioner O’Rielly in this proceeding (“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.”) and Chairman Pai (“History tells us that it is not preemptive regulation, but permissionless innovation made possible by competitive free markets that best guarantees consumer welfare.”) (internal citations omitted)).

¹⁴ CTIA Comments at 6-7; see also Comments of CenturyLink, WC Docket No. 18-28 *et al.*, at 2-3 (filed Aug. 23, 2018) (CenturyLink Comments) (describing principles for the functioning of registries, including transparency and neutrality).

These commenters support the *NPRM*'s proposals to burden toll-free number subscribers or messaging providers with a regulatory mandate to notify RespOrgs prior to text-enabling toll-free numbers, and then requiring the RespOrg to record and update that authorization in the existing SMS/800 Registry or Somos's Texting & Smart Services registry.¹⁵ Yet other commenters express concern, consistent with CTIA's initial comments, that imposing a regulatory obligation on toll-free number subscribers to notify their RespOrgs before they text-enable a toll-free number would create an unnecessary deterrent, running counter to the Commission's goal of facilitating toll-free subscribers' ability to benefit fully from their toll-free numbers and enable new opportunities in messaging.¹⁶

Notably, a number of express commenters suggest that the *NPRM*'s proposals to mandate a role for RespOrgs in the toll-free text-enablement process would be neither simple nor efficient, particularly for the toll-free subscribers the proposed regulations seek to protect. For

¹⁵ See, e.g., Comments of the Ad Hoc Telecom Users Committee, WC Docket No. 18-28 *et al.*, at 5-6 (filed Aug. 23, 2018); Comments of the Alliance for Telecommunications Industry Solutions SMS/800 Number Administration Committee, WC Docket No. 18-28 *et al.*, at 3-4 (filed Aug. 23, 2018); Comments of MessageComm, WC Docket No. 18-28 *et al.*, at 2 (filed Aug. 23, 2018); Bandwidth Comments at 5-7; CSF Comments at 2-3; Comments of Somos, Inc. on Notice of Proposed Rulemaking, WC Docket No. 18-28 *et al.*, at 13-14 (filed Aug. 23, 2018) (noting that "the subscriber should only need to inform its messaging provider that it seeks to text-enable its Toll-Free Number" and "[m]essaging providers who fail to seek verification from the RespOrg could be subject to Commission enforcement action.").

¹⁶ TEN DIGIT Comments at 3 ("Requiring the involvement of the RespOrg and Somos in this process is the quintessential solution looking for a problem."); FSF Comments at 3 ("Nor is it apparent that requiring a 'Responsible Organization' to verify a subscriber's authorization of text messaging to toll free numbers would significantly improve service or accountability."); AT&T Comments at 2 ("RespOrg involvement would not improve these current industry driven processes. ... In fact, their involvement is more likely to inject uncertainty, confuse subscribers, cause delays, and lead to cumbersome multi-step interactions."); ZipWhip Comments at 12 ("the RespOrg ... proposal, if adopted, would burden toll free subscribers without providing any further protection against third parties improperly text-enabling a number."); see also CenturyLink Comments at 2 ("CenturyLink continues to question whether creating a monopoly would serve the public interest, particularly if the entity were to operate on a for-profit basis rather than on a non-profit basis the way many other toll-free number management activities are handled.").

example, one commenter noted that the proposal “does not add security but instead just adds more overhead expenses to small business owners.”¹⁷ Another observed that a requirement to report the text-enablement of a number to the RespOrg would “only add costs without protecting us, the subscriber, in any way.”¹⁸ And a third explained that the proposal would “mak[e] it more difficult to do business” from a subscriber’s toll-free number, and would “prevent [him] from using it in the future.”¹⁹ Further, stakeholders are experiencing “concern[] about what kind of enforcement efforts the FCC would take against toll-free subscribers who, for any reason, fail to inform (or delay informing) their RespOrg of their text-enablement.”²⁰

For all of these reasons, the Commission should eschew adopting an unnecessary and burdensome set of new rules on toll-free subscribers seeking to expand the use of their toll-free number to messaging, and instead allow the market to continue to deliver innovative messaging services while protecting consumers from unwanted messages consistent with industry self-regulation and best practices.

C. Commenters Agree that the *NPRM*’s Proposed Regulations Would Be Inconsistent with the Regulatory Approach for Interstate Information Services.

Consistent with CTIA’s initial comments, other filers express concern that the *NPRM*’s proposed regulatory regime would undermine the Commission’s goals and policies with respect

¹⁷ Express Comment of Aimee Hern, WC Docket No. 18-28 (filed Aug. 15, 2018).

¹⁸ Express Comment of Patrick Londino, WC Docket No. 18-28 (filed Aug. 21, 2018).

¹⁹ Express Comment of Patrick Nelson, WC Docket No. 18-28 (filed Aug. 15, 2018).

²⁰ Express Comment of Justin Idiart, WC Docket No. 18-28 (filed Aug. 31, 2018) (“We have clients in several states, and most of our clients are poor and minorities as we focus on personal injury law and immigration law. Our clients are not available for phone calls or in-person meetings from 9 to 5. Many of them don’t use email. Texting has been a boon for our ability to communicate with them using one number. Access to justice is a real concern already, and [the *NPRM*] would make it more difficult for our clients to get effective representation.”).

to interstate information services. As the Free State Foundation explains, “[i]n the absence of meaningful evidence indicating a market failure, and in the face of ongoing self-regulatory efforts, the Commission should not apply regulations initially intended for Title II toll free telephone services to text messaging and other messaging services that meet the definition of an ‘information service’ under Title I.”²¹

CTIA has amply demonstrated in past filings that text messaging is an interstate information service,²² and the Commission has wisely taken a light-touch approach to promoting interstate information services’ vibrant, competitive marketplace – for “[u]tility-style regulation is particularly inapt for a dynamic industry built on technological development and disruption.”²³ The Commission should maintain this judicious approach in this proceeding.

III. Conclusion.

The record in this proceeding demonstrates that the Commission should maintain its light-touch regulatory framework for messaging services, and abstain from intercession given the absence of evidence of market failure. Ultimately, the Commission should affirmatively conclude that additional regulatory intervention with regard to the text-enablement of toll-free numbers is not warranted, and recognize that industry self-regulatory efforts are facilitating a vibrant, competitive messaging market that protects consumers from unwanted messages.

²¹ FSF Comments at 1-2.

²² See, e.g., CTIA Comments at 10-11; CTIA Reply Comments in Opposition, WT Docket No. 08-7, at 19-25 (filed Dec. 21, 2015) (explaining that the Communications Act of 1934, as modified, dictates messaging is not a Title II “telecommunications service” and is an integrated information service – and that there are no credible arguments to the contrary).

²³ *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 369 ¶ 100 (2018).

Respectfully submitted,

By: /s/ Scott K. Bergmann

Scott K. Bergmann
Senior Vice President, Regulatory Affairs

Thomas C. Power
Senior Vice President and General Counsel

Matthew B. Gerst
Assistant Vice President, Regulatory Affairs

CTIA
1400 Sixteenth Street, NW
Suite 600
Washington, D.C. 20036
202.785.0081
www.ctia.org

September 7, 2018