

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

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In the Matter of)	
)	
Text-Enabled Toll Free Numbers)	WC Docket No. 18-28
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
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**REPLY COMMENTS OF SOMOS, INC.
ON NOTICE OF PROPOSED RULEMAKING**

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TABLE OF CONTENTS

INTRODUCTION AND EXECUTIVE SUMMARY	1
DISCUSSION	2
A. Commenters from Across the Industry Support Use of the TSS Registry and Requiring Messaging Providers, Not Subscribers, To Notify Resp Orgs Prior to Text-Enablement	2
B. Real and Immediate Problems Require Commission Intervention	5
C. Current Voluntary “Verification” Procedures Are Inadequate	7
D. The Commission Need Not Resolve Larger Regulatory Issues or Invoke Any Authority Beyond Its Plenary Power over Numbering	10

INTRODUCTION AND EXECUTIVE SUMMARY

The record in this proceeding confirms that Commission action to establish a single registry for text-enabled Toll-Free Numbers (“TFNs”), administered by the Toll Free Numbering Administrator (“TFNA”), is warranted and broadly supported by industry participants and end-users alike. Industry participants like Responsible Organizations (“Resp Orgs”) and text-messaging service providers support the proposal as set out in the Commission’s Notice of Proposed Rulemaking. And perhaps most notably, the Ad Hoc Telecom Users Committee (“Ad Hoc Committee”), advocating solely for major industry customers, agrees that action is needed and supports a single neutral registry as the most efficient way to protect consumers. The comments from this broad array of industry participants echo the points made in the opening comments of Somos, Inc. (“Somos”) and make clear that Commission action is urgently needed to address an undeniable threat to the integrity of TFNs:

- A single registry will efficiently and effectively solve the documented problem of unauthorized text-enablement of TFNs.
- To that end, the Commission should mandate the use of the Texting and Smart Services (“TSS”) Registry or an adapted version of the SMS/800 Toll-Free Number Registry (“SMS/800 TFN Registry”), administered by the TFNA as the definitive registry for text-enabled numbers.
- Administering the database pursuant to an amended tariff will ensure that the service is provided impartially and at low cost.

The arguments opposing Commission action do not stand up to scrutiny. Some commenters argue that there is no real problem with unauthorized text-enablement of TFNs. Yet Somos and the Resp Orgs continue to see exactly that problem, despite the fact that messaging

providers could use the TSS Registry to avoid it. Commenters also argue that current “self-regulated” verification procedures are sufficient. The substantial number of improperly text-enabled TFNs demonstrates that they are not. Moreover, verification procedures that do not include the Resp Org or the SMS/800 TFN Registry are inherently problematic for multiple reasons, including the fact that they cannot provide a mechanism for disabling the texting capabilities of a number when the former subscriber no longer controls it.

Commenters opposing Commission action also seek to inject larger regulatory issues, including the proper classification of text messaging as a Title I or Title II service, that are irrelevant here. This proceeding is focused on protecting the integrity of TFNs by ensuring that a subscriber who is assigned a number maintains control of that number for texting as well as voice communication. That is a question of numbering administration, and is well within the Commission’s plenary authority over numbering. There is no need to consider any other potential Commission authority, and there is no need to touch on any larger regulatory debate.

DISCUSSION

A. Commenters from Across the Industry Support Use of the TSS Registry and Requiring Messaging Providers, Not Subscribers, To Notify Resp Orgs Prior to Text-Enablement

In their comments, Resp Orgs, messaging providers, and end-users explain the advantages of using a single registry administered by the TFNA. They also suggest (as Somos did) that the Commission should require the messaging provider, not the subscriber,¹ to notify the Resp Org of the subscriber’s intent to text-enable its TFN.

¹ See Declaratory Ruling and Notice of Proposed Rulemaking, *Text-Enabled Toll Free Numbers*, FCC No. 18-77, ¶ 14 (June 18, 2018) (“*2018 Declaratory Ruling and NPRM*”) (proposing to place the notification obligation on the subscriber).

As Somos explained, the most efficient option for ensuring that TFNs are enabled only at the behest of the subscriber is a single registry administered by the neutral and impartial TFNA.² End users, Resp Orgs, and messaging providers support the use of a single registry administered by the TFNA,³ whether that means the TSS Registry or new capabilities in the SMS/800 TFN Registry.⁴ Notably, the Ad Hoc Committee, comprising major consumers in this industry, agrees that a single registry “is the most efficient and cost-effective way to manage” the different uses of TFNs.⁵ The Ad Hoc Committee, which does not admit industry members or accept their financial support, advocates on behalf of consumers for inexpensive and secure communications services.⁶ To that end, it has “consistently advocated for de-regulation in communications markets” where it would benefit consumers; here, however, it recognizes that Commission action is needed to protect consumers.⁷

The comments of the Alliance for Telecommunications Industry Solutions confirm that “[f]rom a technical implementation perspective, a single registry would be simpler and more efficient than the establishment of multiple registries.”⁸ Industry members point out that the existing registry system and administrative procedures can be “leveraged” for this purpose,

² See Somos Comments, at 11-13.

³ *E.g., id.*; Comments of CSF HOLD CO; Comments of MessageComm (messaging provider association); Comments of the Ad Hoc Telecom Users Committee (“Ad Hoc Committee Comments”) (end user association); Comments of the Alliance for Telecommunications Industry Solutions (“ATIS Comments”).

⁴ As noted in Somos’ opening comments, Somos views both of these as acceptable alternatives, as the TSS Registry is already an ancillary service of the SMS/800 TFN Registry.

⁵ Ad Hoc Committee Comments, at 6.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ ATIS Comments, at 4.

avoiding the expense associated with choosing a new administrator and creating a new infrastructure (or attempting to create and coordinate multiple registries).⁹ Further, a single administrator for all aspects of TFN use is “both consistent and convenient.”¹⁰ Somos has stated that it stands ready to amend the SMS/800 Tariff¹¹ to include text-enablement of TFNs.¹² That commitment will not only ensure neutral administration but will also resolve any purported concerns about the cost associated with ensuring the integrity of text-enabled TFNs.¹³

Several commenters also echo Somos’ concern about the Commission’s proposal to require the subscriber to inform its Resp Org when it has authorized text-enablement.¹⁴ Somos and a number of other commenters suggest that the Commission’s rule instead require the messaging provider to inform the Resp Org of the subscriber’s intention, allowing the Resp Org to verify that the proper person or entity has authorized text-enablement before the messaging provider implements it.¹⁵ Consistent with the Commission’s goal of making the process “as simple and efficient as possible,” this minimizes the burden on the subscriber – a concern raised by a number of commenters.¹⁶ It also effectuates the *2018 Declaratory Ruling and NPRM* by

⁹ Opening Comments of Bandwidth Inc., at 7 (“Bandwidth Comments”); *see also* Comments CSF HOLD CO, at 4 (“There is no need to reinvent the wheel.”).

¹⁰ Comments of Twilio Inc., at 1.

¹¹ Somos, Inc. F.C.C. Tariff No. 1 (issued Feb. 5, 2018) (“SMS/800 Tariff”), *available at* <https://s3.amazonaws.com/files-prod.somos.com/documents/SMS800FunctionsTariff.pdf>.

¹² *See* Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text, Enabled Toll-Free Numbers, CC Dkt. 95-155, at 14-16 (Oct. 28, 2016) (“Somos Petition”).

¹³ *See, e.g.*, Comments of CenturyLink, at 3 (“So long as an exclusive registry is efficiently operated on a cost-basis rather than a for-profit basis, then CenturyLink’s concerns with an exclusive registry can be mitigated.”); *see also* ATIS Comments, at 4.

¹⁴ *2018 Declaratory Ruling and NPRM* ¶ 14.

¹⁵ *E.g.*, ATIS Comments, at 3.

¹⁶ *E.g., id.*; Comments of Zipwhip, Inc. on Notice of Proposed Rulemaking, at 12 (“Zipwhip Comments”).

ensuring that the messaging provider does not text-enable a number before the Resp Org is notified of the subscriber's intent.

Some commenters evince concern that a Resp Org might reject a text-enablement request for improper competitive reasons.¹⁷ The TSS Registry already prohibits a Resp Org from rejecting a request except for legitimate reasons.¹⁸ If the Commission is concerned about improper Resp Org denials, it could include a provision in its rules or require a provision in the SMS/800 Tariff making clear that a Resp Org may not reject an eligible text-enablement request that the subscriber has authorized.¹⁹

B. Real and Immediate Problems Require Commission Intervention

There should be no doubt not only that the industry has experienced problems with unauthorized text-enablement but also that the current system has undeniable vulnerabilities that cannot responsibly be left unaddressed. Some commenters opposing the Commission's proposal dispute that there are any problems with improper text-enablement of TFNs.²⁰ Indeed, one commenter, Zipwhip, asserts that "[t]here are no, specific, verifiable instances of a subscriber's toll free number being used by a person other than the subscriber," and that "Zipwhip does not have any such complaints."²¹ However, as demonstrated in the email chain attached to these comments as Exhibit A, Zipwhip has recently ignored requests by one Resp Org to disable

¹⁷ *E.g., id.* at 12-13.

¹⁸ *See* Somos Petition at 9-11. Legitimate reasons would include the fact that the request was to enable the wrong number or a shared-use number.

¹⁹ No one is suggesting that the Resp Org has or should have the authority to decide whether to text-enable a number, *contra* Zipwhip Comments, at 5. The Resp Org is obligated to act as the subscriber's agent at all times.

²⁰ *See* Zipwhip Comments, at 9-10; Comments of CTIA, at 7; Comments of the Free State Foundation, at 2 ("Free State Comments").

²¹ Zipwhip Comments, at ii.

texting capabilities for 78 TFNs whose subscribers had not authorized text-enablement – and in fact, has done so since the Commission issued the *2018 Declaratory Ruling and NPRM*.²² Resp Orgs have notified Somos of 11 other numbers text-enabled without the subscriber’s authorization this year, and that number reflects only situations in which the Resp Org had already unsuccessfully attempted to resolve the issue with the messaging provider directly.²³ Further, contrary to the suggestion that no one has any interest in text-enabling an unassigned TFN,²⁴ over 2,000 TFNs have been text-enabled without the number first being reserved in the SMS/800 TFN Registry.²⁵

These situations are emblematic of the real and continuing problems identified by many commenters. One Resp Org notes that “RespOrgs have found that many of the toll-free numbers that they manage were [text-]enabled without their knowledge,”²⁶ which Toll-Free subscribers rightly find alarming.²⁷ Even where a Resp Org is able to resolve the issue by contacting the messaging provider directly, these problems can be “time-consuming” and “customer disrupting” (but are easily avoidable if messaging providers are required to use the TSS Registry or another centralized registry).²⁸ The record created when the Commission requested comments in

²² See Exhibit A (redacted at the request of the Resp Org; the original is on file with Somos).

²³ These are only the most recent issues. Over the last few years, Somos has fielded dozens of inquiries related to hundreds of TFNs being improperly text-enabled.

²⁴ See Comments of AT&T, at 4.

²⁵ Somos has worked with messaging providers to correct the issue of customers seeking to obtain a TFN for text-messaging services without first reserving the number for voice purposes.

²⁶ Bandwidth Comments, at 6.

²⁷ Ad Hoc Committee Comments, at 4.

²⁸ Comment of Twilio Inc., at 2.

response to Somos' initial petition further demonstrates that text-enablement of TFNs without the subscriber's authorization is a serious concern requiring Commission action.²⁹ And although the volume of text messaging to and from TFNs has grown, uncertainty has impeded even faster growth by casting doubt on the integrity of the service.³⁰

C. Current Voluntary “Verification” Procedures Are Inadequate

As demonstrated by the significant and continuing errors, the current “verification” procedures supposedly in place at messaging providers that do not use the TSS Registry have not worked, and it is now clear that “industry self-regulatory efforts”³¹ are *not* sufficient to protect subscribers or consumers. The procedure described by Zipwhip, for example, is a hodgepodge of different techniques, apparently employed in combinations depending on the provider's view of a particular putative subscriber.³² These techniques are unnecessary if a messaging provider uses the TSS Registry (or a functionally similar registry), because the Resp Org, as the designated agent for the subscriber,³³ can easily verify the identity of the subscriber and authenticate a text-enablement request. It is incorrect that Resp Orgs have no unique knowledge about or relationship to Toll-Free subscribers.³⁴ As the sole entity designated by the subscriber

²⁹ See generally Reply of Somos, Inc. in Support of Its Petition for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, CC Dkt. No. 95-155, WT Dkt. No. 08-7, at 8-9 (Dec. 20, 2016) (collecting comments from Resp Orgs documenting unauthorized text-enablement, including, in one instance, of a Resp Org's *own* TFN).

³⁰ See, e.g., Ad Hoc Committee Comments, at 6.

³¹ Comments of CTIA, at 2. Notably, the current guidelines espoused by CTIA, *see id.* at 5-7, do not reflect the input of most industry participants, including Somos and the Resp Orgs, *see* Somos Inc., Notice of Ex Parte, CC Dkt. No. 95-155, WT Dkt. No. 08-7 (Sept. 2, 2016) (“Somos Notice of Ex Parte”).

³² See Zipwhip Comments, at 7-9.

³³ See 47 C.F.R. § 52.101(b).

³⁴ Comments of AT&T, at 2, 6.

to “manage and administer the appropriate records” in the SMS/800 TFN Registry,³⁵ the Resp Org is the *only* entity that can authoritatively identify the actual subscriber. Indeed, by definition, the Toll-Free subscriber is “[t]he entity that requests a [Resp Org] to reserve a toll free number from the [SMS/800 TFN Registry].”³⁶ Only the Resp Org can say with certainty which entity that is.

One commenter suggests that the Commission’s proposal is unnecessary because ordinary telephone numbers can be ported with a letter of authorization.³⁷ In fact, however, during that porting process, the acquiring carrier goes through the Number Portability Administration Center, providing an authentication function parallel to what the Commission proposes here.

It is true that subscriber contact information is not recorded in the SMS/800 TFN Registry, but that does not mean that the Resp Org has no unique means of verifying the subscriber; on the contrary, because the Resp Org is the only entity that necessarily has all of the subscriber’s information, it is uniquely positioned to authenticate text-enablement requests. Compared with verification through the Resp Org, other methods will always present more room for error, as the record of improperly text-enabled TFNs amply demonstrates. And by definition, a “self-regulated” provider is free to alter or even abandon its current practices for whatever reason. In addition, one messaging provider’s process to authenticate a subscriber does not bind any other messaging provider – rules need to be industry-wide and enforceable.

³⁵ 47 C.F.R. § 52.101(b).

³⁶ *Id.* § 52.101(e).

³⁷ Comments of Ten Digit Communications LLC, at 3-4.

Further, even if messaging providers had *accurate* verification procedures, and continued to use them despite no requirement to do so, those procedures would still be insufficient to effectuate the Commission’s *2018 Declaratory Ruling and NPRM*. First, the Commission has stated that messaging providers may not enable an unassigned TFN.³⁸ That ruling will be undercut if there is no mechanism that will *disable* text messaging if a TFN becomes spare or suspended and is no longer in use. The TSS Registry does exactly that; when a TFN becomes spare in the SMS/800 TFN Registry, it automatically updates to reflect that fact and notifies the messaging provider that texting must be disabled. Commenters opposed to the Commission’s proposed rules do not provide any plausible alternative mechanism for ensuring that spare numbers do not remain text-enabled – including, perhaps, after a new subscriber obtains that TFN. The SMS/800 TFN Registry is the only “immutable record of authority” providing a “clear line of ownership” from the TFN, through the Resp Org, to the subscriber.³⁹

Second, voluntary procedures aimed at verifying the *end-user* of a TFN will not ensure proper treatment of shared-use or bundled-services TFNs. As discussed in Somos’ opening comments, there are a number of circumstances in which an end-user will not be the subscriber of a TFN, including where a TFN is shared among several parties and routed to different parties based on geography.⁴⁰ Where an end-user is not the Toll-Free subscriber, a messaging provider will have difficulty determining who the subscriber is unless it requests verification from the Resp Org. Only by requiring verification by the Resp Org can the Commission effectuate its

³⁸ *2018 Declaratory Ruling and NPRM* ¶ 11.

³⁹ Comments of MessageComm, at 2.

⁴⁰ See Somos Comments, at 4; Somos Notice of Ex Parte.

declaratory ruling that “only a toll free subscriber may authorize the text-enabling of a toll free number.”⁴¹

D. The Commission Need Not Resolve Larger Regulatory Issues or Invoke Any Authority Beyond Its Plenary Power over Numbering

The Commission can and should resolve this important but narrow numbering issue by relying solely on its “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,” in furtherance of its mandate to ensure that numbers are made “available on an equitable basis.” 47 U.S.C. § 251(e)(1). The Commission need not consider whether any other statutory authority is relevant. And the Commission does not need to resolve any larger issues about the regulatory status of text messaging.

The Commission’s authority over numbering administration – “involv[ing] the coordination and distribution of all telephone numbers in the United States”⁴² – is “plenary,”⁴³ allowing the Commission “to set policy with respect to all facets of numbering administration in the United States.”⁴⁴ This authority allows the Commission to “act flexibly and expeditiously on important numbering matters.”⁴⁵ In terms of TFNs, the Commission has appointed Somos the neutral and impartial TFNA⁴⁶ and directed it, pursuant to the SMS/800 Tariff, to distribute TFNs

⁴¹ 2018 Declaratory Ruling and NPRM ¶ 11.

⁴² *People of the State of Cal. v. FCC*, 124 F.3d 934, 943 (8th Cir. 1997), *aff’d in part, rev’d in part on other grounds sub nom. AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

⁴³ *Kristin Brooks Hope Ctr. v. FCC*, 626 F.3d 586, 588 (D.C. Cir. 2010).

⁴⁴ Second Report and Order and Memorandum Opinion and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 271 (1996).

⁴⁵ Notice of Proposed Rulemaking, *Toll Free Assignment Modernization*, 32 FCC Rcd 7885, ¶ 44 (2017) (“2017 NPRM”).

⁴⁶ Order, *Toll Free Service Access Codes Petition to Change the Composition of SMS/800, Inc.*, 28 FCC Rcd 15328, ¶¶ 41-47 (2013).

“on a first-come, first-served basis unless otherwise directed by the Commission.”⁴⁷ Ensuring that a Toll-Free subscriber has control over its TFN for all purposes, and that no one can use a TFN without first being assigned that number, is essential to the orderly distribution of TFNs.⁴⁸ The Commission’s proposed rules are within the core of its exclusive jurisdiction over numbering.

It is therefore abundantly clear that “the fact that [the Commission has] not yet addressed the regulatory status of text messaging services under the Communications Act does not preclude [it] from using [its] authority under section 251(e)(1) to clarify the role of the toll free subscriber to authorize the text-enabling of a number,”⁴⁹ or from using its authority under § 251(e)(1) to protect that role. Although several commenters suggest that the Commission either should⁵⁰ or must⁵¹ determine whether text messaging is a Title I or Title II service, that question is irrelevant to this narrow rulemaking. The Commission’s proposed rules do not regulate text-messaging *services*, and certainly do not impose any kind of Title II common-carrier regulation that concerns some commenters.⁵² Rules to ensure that only subscribers can use their own TFNs are nothing like the kind of nondiscrimination or reasonableness requirements that could follow if the Commission were to determine that text messaging is a Title II service.⁵³ Determining

⁴⁷ 47 C.F.R. § 52.111.

⁴⁸ SMS/800 Tariff, § 2.3.1(A)(7), (9) (providing that the subscriber holds a controlling interest in the TFN).

⁴⁹ *2018 Declaratory Ruling and NPRM* ¶ 12.

⁵⁰ Zipwhip Comments, at 23-24.

⁵¹ Free State Comments, at 4-6.

⁵² *E.g., id.* at 4.

⁵³ *See* 47 U.S.C. § 201 *et seq.*

whether text messaging is a Title I or Title II service is far from “a necessary first step” here.⁵⁴

On the contrary, the Commission’s analysis of its authority to promulgate its proposals should begin and end with its plenary authority over numbering administration under § 251(e).⁵⁵

Some commenters have suggested that the Commission should refrain from taking the actions it has proposed because it would create regulatory asymmetry.⁵⁶ But to the extent there is any asymmetry, it is caused by the inherent differences between TFNs and other numbers. TFNs, an important business communications tool, are a scarce and valuable public resource, as the Commission has recognized,⁵⁷ and have always been allocated and regulated differently from other numbers.⁵⁸ Protecting that equitable allocation requires, in this case, a central, authoritative registry, even if that distinguishes TFNs from others for texting as well as voice purposes. In contrast, there would be a problematic asymmetry if subscribers could only obtain

⁵⁴ Free State Comments, at 6.

⁵⁵ The Commission’s recent net neutrality order, *see* Declaratory Ruling, Report and Order, and Order, *Restoring Internet Freedom*, 33 FCC Rcd 311 (2018), is not to the contrary. If anything, that order further demonstrates the irrelevance of the Title I/Title II debate to numbering administration. There, the Commission determined that broadband Internet access service is a Title I information service and not subject to common carrier regulation. But there was no suggestion that the Title I classification in any way related to the Internet Corporation for Assigned Names and Numbers, which “administers the registration of internet domain names,” *Balsam v. Tucows Inc.*, 627 F.3d 1158, 1159 (9th Cir. 2010).

⁵⁶ *E.g.*, Comments of CTIA, at 8-11; Zipwhip Comments, at 17-23. In some places, Zipwhip appears to suggest that the Commission’s numbering authority extends *only* to voice services. Zipwhip Comments at 19. If that were so, the logical consequence would be that the subscriber to a TFN could have no enforceable interest in the use of that number for faxing, texting, or other non-voice services, because it was allocated pursuant to the North American Numbering Plan. That surprising result would flatly contradict the Commission’s *2018 Declaratory Ruling and NPRM*, with which even opposing commenters claim to agree in principle, *id.* at 4-5; Comments of CTIA, at 6.

⁵⁷ *E.g.*, *2017 NPRM* ¶ 44.

⁵⁸ *See generally* 47 C.F.R. § 52.111.

TFNs on a first-come, first-served basis for voice services, but could use TFNs for text-messaging without regard to the Commission's numbering rules.

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