

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

STEVEN A. AUGUSTINO

DIRECT LINE: (202) 342-8612

EMAIL: saugustino@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
CHICAGO, IL
PARSIPPANY, NJ
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December 6, 2018

VIA ECFS

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

Re: Wireless Messaging Service Declaratory Ruling
WT Docket No. 08-7

Dear Ms. Dortch:

Zipwhip, Inc., through its undersigned counsel, submits this letter to express its support for the Draft Declaratory Ruling in the above-captioned docket.¹ Zipwhip has previously urged the Commission to address this fundamental classification issue prior to its consideration of measures in other dockets.² Zipwhip applauds the Commission's intention to vote on an item that will classify native forms of wireless messaging, short message service ("SMS") and multimedia messaging service ("MMS"), as information services, and declare that such services also are free from regulation as commercial mobile services. The Draft Declaratory Ruling, if approved, will remove uncertainty on the matter and enable companies like Zipwhip to continue their efforts to protect consumers by adopting blocking protocols that eliminate spam.

¹ *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service, Declaratory Ruling, WT Docket No. 08-7, FCC CIRC1812-04* (for consideration at the Dec. 12, 2018) ("Draft Declaratory Ruling").

² Comments of Zipwhip, Inc. on Declaratory Ruling and Notice of Proposed Ruling, WC Docket No. 18-28 *et al.*, at 23 (filed Aug. 23, 2018) ("Zipwhip Toll Free Texting Comments") ("Zipwhip agrees with Commissioner O'Rielly that the Commission should decide the regulatory classification of SMS texting services. Whether SMS texting is a Title II service has been pending before the FCC since at least 2008. The issues are ripe for decision."); *see* Opposition of Zipwhip, Inc., WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016).

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Zipwhip has brought tremendous innovation to the texting market. In 2014, Zipwhip pioneered business texting services, providing for the first time a way for consumers to text with a business' landline, VoIP or toll free number. Zipwhip built the routing infrastructure that allows for cross-carrier high volume business texting and serves as the chosen provider of routing for millions of business customers. Using sophisticated application-to-person ("A2P") protocols, Zipwhip's infrastructure and services handle the high volume of messages that businesses experience and promote direct, human-to-human interactions between a business and its customers. Texting is consumers' preferred platform today, and Zipwhip's introduction of texting to and from businesses expands the utility of texting for consumers.

One of the principal benefits of classifying SMS and MMS texting as information services is that the action will enable messaging providers to continue to protect consumers against spam and fraudulent messages, without concern for restrictions that are imposed on common carriers. As the Commission noted, "[i]n the absence of a Commission assertion of Title II regulation, wireless providers have employed effective methods to protect consumers from unwanted messages and thereby make wireless messaging a trusted and reliable form of communication for millions of Americans."³ Zipwhip's use of A2P channels has contributed to that secure environment by creating systems and safeguards that facilitate a trusted ecosystem for business texting. Zipwhip's A2P platform incorporates consumer protection measures into service level agreements ("SLAs") and specifies support for fraud monitoring, law enforcement protocols, and network-level consumer opt-out controls like the "STOP" command.⁴ Messaging providers that seek to circumvent these reasonable consumer protection measures are, properly, blocked by spam filters.⁵ This approach benefits businesses and consumers by providing access to business texting while preventing abuse.

In addition, industry consensus guidelines protect consumers from unwanted messages while ensuring they continue to receive desired messages. A primary leader of this industry effort has been CTIA. CTIA's stakeholder groups have brought various members of the ecosystem together to develop guidelines. CTIA's most recent guidance provided voluntary best practices for businesses that participate in the wireless messaging ecosystem with successful

³ Draft Declaratory Ruling ¶ 43.

⁴ If a consumer requests to opt-out of future texts via the "STOP" command, Zipwhip automatically blocks attempts to send future messages, thereby preventing the consumer request from being circumvented by the message originator.

⁵ Fact Atlas. "Choice and Innovation: Safeguarding the SMS Marketplace." Exhibit to letter from Anna Henningsgaard, Fact Atlas, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-7 (Dec. 21, 2015) ("Fact Atlas White Paper").

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transmission of *wanted* messages being a core principle.⁶ As the Commission noted, there is no evidence indicating that businesses are acting anti-competitively in the absence of Title II regulations.⁷ Any industry effort by wireless carriers, or aggregators like Zipwhip, to behave contrary to consumer interest or desire would be thwarted by the ability of customers to switch to another provider. “Wireless providers have every incentive to ensure the delivery of messages that consumers want to receive in order to guarantee the integrity of this essential service and to retain consumer loyalty.”⁸ To continue this consumer trust, Zipwhip works closely with its wireless carrier partners to ensure that business texting is performed in a way that enhances the natural human-to-human interaction indicative of voice calls, without the unwanted calls that have plagued the voice space in recent years.

Although the Draft Declaratory Ruling discusses SMS and MMS technologies in particular,⁹ Zipwhip submits that the reasoning employed in the draft applies equally to other texting technologies, such as RCS. Rich Communication Service (“RCS”) is a texting protocol introduced in 2007 that is gaining increased adoption today. Zipwhip has recently implemented RCS support for business lines, partnering with customers such as the Sacramento Kings to bring this enhanced consumer experience to business texting.¹⁰ RCS supports the same features of SMS and MMS that the Draft Declaratory Ruling concludes render them information services, such as the capability for “storing” and “retrieving” information and the “transforming” and “processing” of messages.¹¹ RCS also adds enhanced features such as read receipts, group messaging features, animations, and other capabilities.¹² For the same reasons that SMS and

⁶ See CTIA Messaging Principles and Best Practices, available at <https://api.ctia.org/docs/default-source/default-document-library/170119-ctia-messaging-principles-and-best-practices.pdf> (last visited Dec. 5, 2018) (“It is in the best interests of consumers and all members of the wireless messaging ecosystem to enable consumers to freely exchange wireless messages with other consumers and enterprises while endeavoring to eliminate unwanted messaging traffic threats.”).

⁷ See Draft Declaratory Ruling ¶ 46.

⁸ *Id.*

⁹ *Id.* ¶ 9 & n. 28.

¹⁰ See <https://www.zipwhip.com/blog/sacramento-kings-partner-with-zipwhip-to-become-first-professional-sports-team-to-offer-rcs-messaging/> (last visited Dec. 5, 2018).

¹¹ See Draft Declaratory Ruling ¶¶ 19-22.

¹² For general information on RCS, see the GSMA “Future Networks” page at <https://www.gsma.com/futurenetworks/rcs/> (last visited Dec. 5, 2018); see also <https://www.zipwhip.com/blog/what-is-rich-communication-services-or-rcs-google/> (last visited Dec. 5, 2018).

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MMS are information services, RCS also is an information service. The Commission should broaden the reach of its Declaratory Ruling to include successors to SMS and MMS, such as RCS. Doing so now will assist the rapid expansion of RCS messaging and avoid the potential decade-long delay and uncertainty that SMS and MMS messaging have endured.

Zipwhip is strongly in favor of efforts to limit the adoption of overly burdensome regulations on thriving marketplaces like that of text messaging while allowing for mechanisms to maintain consumer security and trust in the industry. The Commission's Draft Declaratory Ruling would further these key objectives and we support the adoption of the item, with the modification noted above.

Sincerely,

A handwritten signature in black ink that reads "Steven A. Augustino". The signature is written in a cursive style with a large, stylized initial 'S'.

Steven A. Augustino

Counsel for Zipwhip, Inc.