



via ECFS

20 November 2015

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: *PETITION SEEKING A DECLARATORY RULING CLARIFYING THE REGULATORY STATUS OF MOBILE MESSAGING SERVICES, WT Docket No. 08-7*

Dear Ms. Dortch:

HeyWire (fka MediaFriends Inc.) concurs with the issues and concerns expressed in Twilio's petition to the FCC in its filing of 28 August 2015 and as such, support the petition's request that mobile messaging services are governed by Title II of the Communications Act.

In reference to Twilio's statements on pages 15 & 16 of its petition citing the 3 December 2014 Wired magazine article, regarding the incident HeyWire and all other non-CMRS providers experienced on 3 April 2014, the sudden and unexpected disruption (no advance warning was given) to HeyWire's production network traffic, happened exactly as described.

In addition to the disruption to our customers who suffered messaging traffic, monetary and reputational loss, this deliberate act violated an unwritten tenet within the global networking profession of *always* providing advance warning of deliberate disruption to production service regardless of whether the reason is technical, business or financial, and then only as a last resort after all attempts at resolution of whatever the dispute may be, have failed.

HeyWire was not aware of any dispute (technical, business or financial) with regard to the affected traffic disruption prior to the incident of 3 April 2014, which made the disruption that much more perplexing. We were informed following the disruption that in order to restore operational status to the affected production traffic, HeyWire would have to enter into a contractual business agreement with a single entity designated by the mobile carriers.

As presented in the Twilio filing, the system by which SMS, MMS and ShortCode programs are authorized, is a cumbersome, disjointed and inherently biased in favor of the oligopoly of the four(4) dominant mobile carriers, which control ~95% of the market<sup>i</sup>.



For any service provider outside of the four oligopoly mobile carriers, without approval of *all* four of the oligopoly mobile carriers, any program to enable mobile messaging services (SMS, MMS, ShortCode) is futile since it would be impossible for an enterprise or service provider to provide products and services with caveats that it would only function if the customer has a mobile device from specific mobile carriers. This gives undue influence and control over the market to the oligopoly to delay or deny enterprises and service providers, other than themselves, the ability to provide services that they may deem undesirable to their oligopoly position.

Mobile carriers' practices of censoring messages through blocking numbers and filtering messages is yet another anti-competitive tool used to disrupt commerce and limit whom consumers may communicate with. The fact this filtering and blocking occurs is supported by many of the comments already filed in support of this petition. Without Title II treatment, their de facto oligopoly status makes them the sole arbiter of the content and services consumers interact with through messaging give the mobile carrier limitless power to decide who consumers and businesses can message. This censorship is about disabling competition, retarding innovation and not about SPAM prevention.

HeyWire has engaged at various times the mobile carriers of the oligopoly regarding innovative programs that enterprises and consumers have expressed interest in providing to the market only to be told that the mobile carrier was interested in providing similar or same services *themselves in the future* and would not authorize HeyWire to provide such services to its customers, effectively violating common carrier tenets.

Such incidents and similar experienced by HeyWire and other innovative service providers exemplifies that without strict oversight, operators and service providers have no deterrent to behave in manners that are anti-competitive, monopolistic and a hindrance to innovation, which ultimately harm the economy, enterprise, medium and small businesses and most importantly, the consumer.

The 2015 TCPA Declaratory Ruling specified that SMS messages be treated the same as voice calls. Today, anyone can call any phone number in the world. Yet, the SMS and MMS ecosystem is controlled by various gate keepers, sometimes in the form of proxies of the oligopoly, that determine if they will allow SMS and MMS messages ingress *and* egress of their network, indirectly acting as censors determining who their customers may or may not communicate with.

This informal structure of censorship violates the premise of open communications of the PSTN and Internet.

HeyWire has devoted enormous intellectual capital, financial resources and industry education into development of its technology and resultant products. It has expressed its willingness to provide additional information that would assist the FCC in this regard.



Pursuant to the Commission's rules, this notice is being filed for inclusion in the public record.

Regards,  
Gene Lew  
Chief Technology Officer for HeyWire

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<sup>i</sup> FCC 17<sup>th</sup> Annual Mobile Wireless Competition Report