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April 26, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Room TW-B204  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting:  
WT Docket No. 08-7, Petition of Twilio Inc. for an Expedited Declaratory Ruling  
Stating That Messaging Services Are Title II Services  
CC Docket No. 95-155, Toll-Free Service Access Codes

Dear Ms. Dortch:

On April 22, 2016, Chris Currie of Aerialink Inc. (Aerialink), Gene Lew of HeyWire, Inc. (Heywire), Noah Rafalko and Mitchell Claar of TSG Global Inc. (TSG Global), Greg Rogers of Bandwidth.com, Inc. (Bandwidth), and Gina Perini, Alan Stiffler, and the undersigned of Somos, Inc. (Somos) met with Commission Staff to discuss the ecosystem issues surrounding texting to Toll-Free Numbers. Commission Staff included Heather Hendrickson (by phone), Pramesh Jobanputra, Walter Johnston, Melissa Kinkel (by phone), Jennifer Salhus (by phone), Karen Sprung, Kristi Thompson, Matt Warner, and Mary Claire York (by phone). Aerialink, HeyWire, TSG Global and Bandwidth provide text and picture messaging services to subscribers of Toll-Free Numbers ("Service Providers"). Somos is the Toll Free Neutral Administrator and operator of the SMS/800 Platform, the authoritative registry for the administration, routing and porting of Toll-Free numbers (TFNs) in the North American Number Plan (NANP), and the operator of the Texting and Smart Services (TSS) Registry, the authoritative registry for the administration, routing and porting of TFNs for texting and smart services.

At this meeting we discussed how TFNs have been a staple of business and consumer communications for decades, but the system has become more complex as the service evolved from voice only to a service across multimedia platforms, including text and picture messaging. Order and a level-playing field are essential to ensuring the ecosystem remains dependable for all those who rely on it. This is why CTIA developed guidelines, leading to the creation of the Somos TSS Registry, as further described below.

We further discussed how texting to TFNs has been part of the suite of services for Toll-Free subscribers for several years. Using over-the-top technology, it is possible to text-enable any ten-digit number in the US, including TFNs.

However, one of the entrants in this new marketplace – Zipwhip, a vendor of the wireless carriers – has created chaos by refusing to follow CTIA’s guidelines, even though they participated and approved them, and is obstructing the order of the Toll-Free industry and the messaging ecosystem. Zipwhip, which competes with the Service Providers on a retail level, struck deals with the five largest wireless carriers that requires all texting to TFNs to be routed through Zipwhip, segregating this texting traffic.<sup>1</sup> Zipwhip is the de facto intercarrier vendor (ICV) and traffic aggregator for Toll-Free texting traffic.<sup>2</sup> The CTIA SMS Interoperability Guidelines state that a traffic aggregator should not also compete on the retail level.<sup>3</sup> This has created a broken system in which one player has used its anti-competitive power to be an improper gatekeeper of texting to TFNs.

Not only has Zipwhip used its position as a vendor of the mobile operators to skew the ecosystem artificially in its favor, it has used it to squelch competition and innovation. Today, all of Zipwhip’s competitors are forced to contract with Zipwhip to receive messages from the subscribers of top five wireless carriers, which account for more than 99% of all mobile subscribers in the U.S. Somos has learned that Zipwhip has engaged in the following improper and anti-competitive actions in the past:

- Arbitrarily and without notice cut off messaging traffic to its competitors;
- Threatened to cut off messaging traffic to competitors if certain conditions were not met;
- By virtue of their position, Zipwhip can see traffic destined for competitors and for TFNs that are not text enabled. It has then used such customer proprietary network information (CPNI) to market their own services;
- Attempted to take retail customers away from other Service Providers by stating that their current Service Provider could not guarantee all the customer’s traffic can be delivered – only Zipwhip can guarantee the traffic will not be cut off;
- Significantly raised prices for originating and terminating messaging traffic; and
- Incorrectly routed and billed messages.

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<sup>1</sup> After the deals with Zipwhip became known, other Service Providers approached the wireless carriers and offered to carry the Toll-Free texting traffic on the same terms and conditions as Zipwhip. The wireless carriers rebuffed their offers and told them they must get the Toll-Free texting traffic from Zipwhip.

<sup>2</sup> See Zipwhip Ex Parte in Docket 08-7, filed April 22, 2016.

<sup>3</sup> “To insure impartiality, to be able to serve as a 10-digit aggregator, it is recommended that vendor be restricted from providing 10-digit services.” CTIA SMS Interoperability Guidelines at Section 3.2. [http://www.ctia.org/docs/default-source/default-document-library/sms\\_interoperability\\_guidelines\\_v3-2-2\\_jan\\_2015-as-posted.pdf?sfvrsn=2](http://www.ctia.org/docs/default-source/default-document-library/sms_interoperability_guidelines_v3-2-2_jan_2015-as-posted.pdf?sfvrsn=2) (last accessed April 26, 2016).

Due to these issues, the ecosystem became unstable and unreliable. Service Providers looked to CTIA for help. CTIA formed a working group of its members that included Service Providers, wireless providers, Zipwhip and others. CTIA requested Somos (then SMS/800), as the Toll Free Neutral Administrator and provider of the SMS/800 Platform, to help craft a solution. With the input and consent of these groups, in late 2014, CTIA amended its Messaging Guidelines to state:

- Responsible Organizations (Resp Orgs) should be notified when someone wants to text-enable a TFN of their subscribers;
- Only working voice TFNs should be text-enabled; and
- Somos will add capabilities to its Toll-Free registry to enable the above.

In July 2015, Somos developed and deployed the TSS Registry pursuant to these guidelines.

Zipwhip, however, continues to ignore the CTIA guidelines that the industry, including Zipwhip, agreed to, creating confusion and potential harm to both consumers and businesses. In particular, Zipwhip has and continues to:

- Text-enable TFNs without the knowledge or consent of the Resp Orgs;<sup>4</sup>
- Refuse to use the TSS Registry to ensure that the TFNs are correctly text-enabled; and
- Refuse to port numbers when a customer wishes to leave Zipwhip for another service provider.

As a result of their non-compliance, Zipwhip can and has text-enabled TFNs for entities that have no relationship to its voice subscriber. For example, one such incident is detailed in Somos' Reply Comments in Docket 08-7, filed on December 21, 2015.

Actions such as this harm the integrity of the Toll-Free system. A consumer should have complete confidence that, by whatever means a consumer wishes to reach a Toll-Free subscriber – wireless, wireline, VoIP, or text – that the consumer's communications will reach the intended party.

Using the TSS Registry prevents TFNs from being text-enabled by unrelated third parties. We discussed such an incident that occurred last week, where a typographical error could have resulted in text-enabling a wrong number. Since the Service Registrar used the TSS registry, the mistake was caught before the number would have been incorrectly text-enabled.

In addition, we discussed how carriers are using volumetrics and other methods to block texts that are legitimate and wanted traffic. While there is widespread support across the messaging ecosystem to control spam, the methods the wireless carriers and ICVs currently utilize are blunt instruments that also end up creating harm for legitimate consumers of messaging services.

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<sup>4</sup> Doing this for voice services would be considered slamming.

In summary, Somos believes that the CTIA guidelines are sufficient to address most of the broken ecosystem issues that exist today, but only as long as they are followed and the competitive ecosystem is allowed to grow and innovate without improper suppression by dominant players.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joel Bernstein". The signature is fluid and cursive, with the first name "Joel" being more prominent than the last name "Bernstein".

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