

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

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In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
_____)	

**COMMENTS OF TWILIO INC. ON
UNIVERSAL SERVICE FUND CONTRIBUTION REFORM**

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Dated: July 9, 2012

Twilio Inc. (“Twilio”) submits these comments in response to the Federal Communications Commission’s Further Notice of Proposed Rulemaking on Universal Service Fund (“USF”) contribution reform.¹

Twilio focuses its comments on Sections IV and V of the FNPRM, specifically opposing a numbers-based alternative to the current revenue-based USF contribution system and asking that the Commission end regulatory uncertainty surrounding text messages and their classification under the Communications Act. FNPRM ¶¶ 49, 284.

I. INTRODUCTION AND SUMMARY

Twilio encourages the Commission to proceed with USF contribution reform in order to simplify and clarify the process to allow companies to focus on their products and customers. The Commission is appropriately trying to fix the issues that have arisen with the current revenue-based USF contribution model and is appropriately evaluating whether expanding the base can reduce individual contribution obligations overall. FNPRM ¶ 3 (Commission is focused on “limit[ing] the overall contribution burden”).

Reform should occur in a technology-neutral manner, however, that does not favor a contribution method that would in turn favor a certain type of technology. Thus, the Commission should not institute a numbers-based contribution system because it risks creating perverse incentives regarding the use of telephone numbers and may be undermined by the pace of technological innovation in any event. A revenue-based system remains the best option for USF because it can be assessed regardless of technology and does not create an incentive to avoid revenue generation. Finally, should the Commission conclude that SMS is eligible for

¹ *Further Notice of Proposed Rulemaking*, WC Docket No. 06-122, GN Docket No. 09-51, FCC 12-46 (rel. April 30, 2012) (“FNPRM”).

USF contributions, the Commission should also classify SMS as a telecommunications service in order to reduce uncertainty in the industry.

II. TWILIO

Twilio was founded over three years ago as an innovative Internet-based cloud communications company that is reinventing telecommunications by merging cloud computing, web services, and traditional telecommunications. Twilio hosts a telephony infrastructure web service in the cloud, allowing web developers to integrate phone calls, text messages, and IP voice communications into their web, mobile, and traditional phone applications. In short, Twilio takes things that are complicated about telecommunications and makes them simple.

Using Twilio's software platform and simple developer tools, web developers and businesses can build sophisticated unified communications solutions such as call centers, office phone systems, call tracking tools, and more that interoperate with multiple telephone networks. Twilio's powerful API minimizes the learning curve required to build advanced, reliable voice communications applications on the Internet that solve critical business and consumer needs. Twilio's products work simultaneously across platforms, allowing web browsers, mobile phones, and tablets running iOS or Android to communicate seamlessly. Twilio's service integrates with traditional phone service and text messages/SMS using Twilio's existing web service APIs for making and receiving phone calls and text messages.

One of the fastest growing portions of Twilio's business is mobile application development which integrates Voice over IP ("VoIP") and SMS into applications for iOS and Android. In fact, over 100,000 developers have used Twilio to integrate telecommunications into their applications and products. Twilio has gone from three employees to over one hundred employees in three years and has plans to hire many more "high-tech" employees in the coming years. The thousands of developers that are using Twilio are creating jobs when they invent a

new product or application that captures the consumer's attention and grows into a business.

Finally, Twilio is quickly expanding internationally, having recently launched in England and Europe.

Many companies and organizations have used Twilio's voice products to create new services for users or more efficiently manage existing products. The Democratic National Committee was able to inexpensively scale its voter fraud protection hotline for the 2010 elections using Twilio to handle thousands of calls at a fraction of the cost of using legacy systems. StubHub, a subsidiary of eBay, used Twilio to create an automated call to confirm that tickets were still available after a buyer decided on a purchase. Many new products and services using Twilio also rely on text messages to convey information and reach consumers. Intuit Inc. used Twilio to develop a new security feature which sends a verification code to the online user's phone, via phone call or SMS, when an online user attempts to change sensitive data. This minimally intrusive security feature prevents identity theft while relying on the cloud to save time and money in implementation. WalMart was able to create SMS notifications for its "Values of the day" discounts using Twilio, which allowed WalMart to test the idea quickly and inexpensively before rolling out the feature. These and many other innovative ideas would not be possible without Twilio.

In short, Twilio is part of a new generation of companies involved in telecommunications that are benefiting consumers by enabling innovative new applications, products, and services. By allowing developers to easily integrate telecommunications into their products and applications, Twilio is an important and unique part of the ecosystem. Twilio's interest in the present proceeding stems from its use of text messages and its status as a non-interconnected VoIP provider.

III. COMMENTS

Twilio encourages the Commission to act on USF contribution reform. The Commission's primary goal in this proceeding should be to simplify and clarify USF contributions to the benefit of companies who must deal with process. Far too much time and attention are devoted to USF issues by companies that should otherwise be focusing on their products and customers.

Twilio focuses its comments on Sections IV and V of the FNPRM addressing who should contribute to USF and how contributions should be assessed. Specifically, Twilio first addresses Section V, alternatives to the current revenue-based USF contribution model, and argues that a numbers-based system should not be implemented because it would not be technology-neutral and would encourage gamesmanship. FNPRM ¶ 284. Second, in reference to Section IV, Twilio urges the Commission to end the regulatory uncertainty surrounding text messages and classify them as a telecommunications service within this proceeding. *Id.* ¶ 49.

A. A Numbers-Based Contribution System Would Create Perverse Incentives On the Use of Telephone Numbers

In line with the goal of simplifying USF contributions, the Commission should focus on a technology-neutral process that fulfills the statutory requirement that contributions be "equitable and nondiscriminatory" and in the public interest under the Commission's permissive authority, as necessary. 47 U.S.C. § 254(d). A revenue-based system is technology neutral and does not presume to choose among technologies like a numbers-based or connections-based system would do. FNPRM ¶¶ 219, 284. Those alternative contribution methods would favor technologies that do not rely on telephone numbers to provide telecommunications or rely on few connections.

The Commission has generally favored technology-neutral methods for USF distribution, recognizing that it should not be picking winners and losers, instead allowing the market to operate. “A technology-neutral approach is key to putting scarce resources to the best possible use.” *Chairman Julius Genachowski, Remarks on Modernizing and Streamlining the Universal Service Fund, the Information Technology and Innovation Foundation* (Feb. 7, 2011).² The same principles should apply to USF contribution reform. To reform USF in a technology-neutral manner, additional contributors may need to be brought into the system, but a revenue-based methodology ensures that they are all treated equally in calculating a USF contribution.

A numbers-based contribution system would not be technology neutral. A numbers-based system would risk creating perverse incentives for the use of telephone numbers and place USF burdens on technologies that are dependent on telephone numbers while ignoring those that are not. Additionally, companies that rely on numbers could act to avoid USF by reducing their use of telephone numbers. Given the current and future state of software and hardware involved in telecommunications, one can imagine assigning a single telephone number to hundreds of users with extensions used to differentiate among users. If the company combined that service with other services and products, consumers might use the service despite the inconvenience of having to use a separate extension. Today, a PBX could have one telephone number assigned to it with massive capacity, also using extensions. Thus, telephone numbers do not necessarily serve as a good proxy for value or use of the network. Some in-service telephone numbers are highly used and others are scarcely used.

Moreover, as data-based voice and SMS services proliferate, telephone numbers may become less and less relevant to telecommunications. Usernames associated with a data-

² Available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304489A1.pdf (last visited July 6, 2012).

based voice service could eclipse the need for a telephone number in a few short years. Currently, a call originating in IP and terminating on the PSTN does not necessarily need a telephone number assigned to it, such as using Skype's "call phones and mobiles" service.³ Thus, application and data based communication services could quickly eclipse the use of telephone numbers, making a numbers-based contribution system unsustainable in the long term. This is especially true because the cost of a telephone number would rise significantly as discussed below.

While these may seem like extreme examples, a numbers-based system would incentivize companies to avoid using telephone numbers thereby reducing the effectiveness of the contribution model. On the other hand, a revenue-based system will not incentivize companies to avoid making money and the issues with that model can be fixed in this proceeding. The stability of USF is better preserved by using a revenue-based system, which is generally predictable and less subject to action by companies that could avoid the system altogether.

A numbers-based system would also dramatically increase the cost of doing business for companies like Twilio that use telephone numbers in innovative and useful ways. A numbers-based system makes a commodity (a telephone number) that is currently inexpensive, and dramatically increases the cost of that commodity. Twilio prices telephone numbers to its customers at \$1 a month.⁴ Under a numbers-based system, Twilio could pass through the cost of USF to its customers or face reduced or even negative revenue from telephone numbers. Neither situation benefits Twilio or its customers who are making new and useful products for the

³ Available at <http://www.skype.com/intl/en-us/features/allfeatures/call-phones-and-mobiles/> (last visited July 6, 2012).

⁴ Twilio Pricing, available at <http://www.twilio.com/pricing> (last visited July 5, 2012).

everyday consumer. Other companies that have relied on the fact that telephone numbers are inexpensive would also have to readjust their businesses to adapt to a numbers-based contribution system.

In sum, a numbers-based contribution system would disrupt businesses and only cause companies to avoid using telephone numbers. Furthermore, the advance of data-based applications may make the use of telephone numbers increasingly unnecessary over the coming years. While the current revenue-based system has some issues, they can be addressed through the current proceeding. A radical departure is not necessary.

B. The Commission Should Classify SMS When Deciding How to Treat it for USF Purposes

If the Commission ultimately decides that SMS should be included within USF contributions, the Commission should also take the opportunity to affirmatively classify SMS as a telecommunications service. If SMS is included in USF, administrative burdens commence for companies using SMS and, of course, money that was otherwise devoted to the company must now go to USF. These burdens should be matched by the regulatory certainty afforded by an affirmative classification by the Commission. When the Commission included interconnected VoIP in USF contributions without classifying VoIP as a telecommunications or information service, it continued years of disputes and litigation between companies over the status of VoIP when it could have provided regulatory certainty. The Commission should work to avoid this same scenario for SMS and provide regulatory certainty.

In light of the benefits to consumers and the SMS industry, Twilio has previously detailed the actions that the Commission should take on SMS in its recent comments in CG

Docket No. 02-278. *See* Twilio Comments, CG Docket No. 02-278 (Apr. 30, 2012).⁵ In those comments, Twilio encouraged the Commission to provide the market with regulatory certainty by acting on existing petitions and requests for clarification. Twilio encourages the Commission to act on Public Knowledge’s long-standing petition to ensure that nondiscrimination principles are applied to text messages, just like any other type of call.⁶ Another long-standing petition Commission should grant is from Club Texting which would clarify that application providers that provide the technology that others use to send text messages are not “senders” under the TCPA.⁷ The Commission should also resolve the petition filed by GroupMe and clarify provisions of the Telephone Consumer Protection Act that are precipitating baseless lawsuits.⁸ And, in line with this proceeding, the Commission should provide guidance to USAC and find that SMS is a telecommunications service.⁹

As Twilio has previously argued, the Commission has found that a text message is a call under Title II of the Communications Act, 47 U.S.C. § 227.¹⁰ Accordingly, since the FCC

⁵ Available at <http://apps.fcc.gov/ecfs/document/view?id=7021914839> (last visited July 5, 2012).

⁶ *See Public Knowledge, et al.*, Petition For Declaratory Ruling that Text Messages and Short Codes are Title II Services or are Title I Services Subject to Section 202 Non-Discrimination Rules, WT 08-7 (Dec. 11, 2007).

⁷ *See* Public Notice, *Consumer & Governmental Affairs Bureau Seeks Comment on Club Texting’s Petition for Declaratory Relief that Text Broadcasters are Not “Senders” of Text Messages Under § 227(b)(1) of the Telephone Consumer Protection Act*, CG Docket No. 02-278, DA 09-2387 (Nov. 9, 2009).

⁸ *GroupMe, Inc.*, Petition for Expedited Declaratory Ruling And Clarification, CG Docket No. 02-278 (filed March 1, 2012) (“GroupMe Petition”).

⁹ USAC Letter, WC 06-122 (April 22, 2011) available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021346734> (last visited Dec. 2, 2011); *see also* Public Notice, *Wireless Competition Bureau Seeks Comment on Request for Guidance Filed by the Universal Service Administrative Company*, WC 06-122 (May 9, 2011).

¹⁰ *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003) (“This [prohibition under the Telephone

has placed text messages under the rubric of Title II regulation in § 227, the FCC would need to reverse itself to rule that a text message is not a “telecommunications service,” but instead is an “information service.”

In short, SMS should be subject to common carriage principles and technology companies that facilitate SMS should not be held liable for the actions of users. In light of the existing issues regarding SMS, if the Commission includes SMS in USF, the Commission should also strive for regulatory certainty as a result of this proceeding, rather than continued questions about the status of SMS.

IV. CONCLUSION

In sum, Twilio strongly urges the Commission to reform USF contribution in a manner that simplifies the system and reduces the administrative burden on companies dealing with USF. The Commission should not implement a numbers-based USF contribution system given the perverse incentives it will have on the market. Finally, if the Commission finds that SMS should be included or not included in USF, it should also classify SMS as a telecommunications service to ensure that common carriage principles apply to SMS, just like other types of calls.

Consumer Protection Act] encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls...”); *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009) (affirming FCC’s determination that a text message is a call for purposes of the Telephone Consumer Protection Act, 47 U.S.C. § 227).

Dated: July 9, 2012

Respectfully submitted,

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