Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MILTON H. FRIED, JR., and RICHARD EVANS, for themselves and all others similarly situated, Plaintiffs, v. SENSIA SALON, INC., a Texas Corporation, TEXTMUNICATIONS, INC., a California Corporation, and AIR2WEB, a division of VELTI, INC., a Delaware Corporation, Defendants.	**Case No. 4:13-cv-00312**

DECLARATION OF HARVEY SCHOLL AS CORPORATE REPRESENTATIVE OF AIR2WEB, INC.

I, Harvey Scholl, am over eighteen years of age and hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Chief Technology Officer of Air2Web, Inc. ("Air2Web"). I have personal knowledge of the facts set forth herein or, where I lacked personal knowledge, I have verified the information, in my capacity as a corporate representative of the company, based on the records and books of the company and the knowledge of its other past and present employees.

Air2Web, Inc.'s Pertinent Business Operations

2. Air2Web is a mobile messaging aggregator, meaning that it acts as a conduit in the chain of transmission of short message service ("SMS") messages (also known as "text messages") between content providers (those entities that draft and send text messages)

("Content Providers") and subscribers (those who receive text messages) ("Subscribers") of mobile telephony services offered by mobile-telecommunication carriers ("Carriers").

3. Content is transmitted via Air2Web's system automatically pursuant to the information and other data inputted by an Air2Web customer (the "Customer"), which may also be the Content Provider or a partner or client of the Content Provider. Specifically, the Customer using Air2Web's system creates the content of the text messages (the "Content") and determines the recipients (the addressees) of the text messages (including the SMS short code and the mobile phone identification number, as discussed below). Thereafter, the Customer transmits this data (consisting of the Content and addresses (telephone numbers) via Air2Web's platform) either directly or indirectly through multiple tiers. Through an automated process, acting on the instructions provided by the Customer, Air2Web's platform automatically transmits the Content to Carriers with the addressee information, and the Carriers transmit the Content (in the form of a text message) to their Subscribers.

How Customers Transmit SMS Messages Via Air2Web, Inc.'s System

4. Air2Web's system operates as follows:

a. For any SMS message terminating at a mobile device, Air2Web's Customers input the following information into Air2Web's system either via Air2Web's application programming interface ("API") or a web-based user interface ("UI"): (i) a sender ID (*e.g.*, a message routing code ("Short Code") leased from the Common Short Code Authority ("CSDA")); (ii) a message body (*i.e.,* the Content); (iii) a Mobile Station International Subscriber Directory Number ("MSISDN") (*i.e.*, the mobile number associated with the mobile device to which the Customer is directing the Content; as a practical matter, this is the Subscriber's telephone number). The Customer supplies each of the applicable Short Code, the Content and

the MSISDN (collectively, the "Message Request") with respect to each mobile terminated SMS message.

b. Via an automated process, Air2Web's system formats the Customer's Message Request as received from the Customer into the Short Message Peer-to-Peer ("SMPP") standard protocol required by the Carriers in order to transmit the Message Request to the Carriers. Air2Web's system then, via an automated process, automatically transmits the formatted Message Request as a submit_sm protocol data unit ("PDU") to the short message service center ("SMSC") of the appropriate Carrier (including indirectly via other mobile messaging aggregators) which processes the PDU within its systems for subsequent transmission to its Subscriber. Air2Web's system does not "dial" the MSISDN associated with the Message Request to establish a connection with the SMSC in order for Air2Web's system to transmit the remainder of the Message Request.

c. Neither Air2Web nor Air2Web's system determines any part of the Message Request. Specifically, neither Air2Web nor Air2Web's system determines the Content and does not generate (randomly or sequentially) the MSISDN to which the Content is transmitted. Further, Air2Web's system transmits Content only as directed by Air2Web's Customers based on the specific MSISDNs provided by Air2Web's Customers for the respective Content.

How Textmunication Processed The SMS Messages At Issue In This Litigation

5. With regard to the text messages at issue in this litigation, Air2Web did not draft or send the text messages, took no active role in transmitting the text messages, and was not involved in creating the Content or assembling the list of telephone numbers and recipients of the text messages. At all times relevant, defendant Textmunication, Inc. was an Air2Web Customer

and had API access to Air2Web's system. My understanding is that Textmunication used that API access to transmit Content on behalf of defendant Sensia Salon, Inc.

6. Because Air2Web takes no part in creating the Content or assembling addressee information and because Textmunication accessed Air2Web's systems via API connections, I would have to speculate as to other details regarding the capacity of Textmunication's systems to create, manage and process the text messages at issue in this litigation and the source of the addressee information.

Air2Web Does Not Use an Automatic Telephone Dialing System

7. Air2Web's system does not use an automatic telephone dialing system as contemplated by the Telephone Consumer Protection Act ("TCPA"). Under the TCPA, the term "automatic telephone dialing system" or "autodialer" is defined as "equipment which has the capacity — (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. §227(a)(1).

8. Autodialer systems include hardware that, when paired with certain software, has the capacity to store or produce numbers and *dial* those numbers at random, in sequential order, or from a database of numbers [emphasis added]. *See* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd 14014 ¶ 133 (2003) (Commission focusing on equipment's potential capacity to generate and dial random or sequential numbers, noting that predicative dialing hardware "when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers."). Autodialer systems "dial" telephone numbers in order to transmit content (*e.g.*, voice calls or SMS messages[1]) by simulating typical telephones (*e.g.*, via modems or telephony boards within such systems) to access the public switched telephone

[1] The statements in this Declaration are limited to content constituting SMS messages.

networks ("PSTN") of licensed Carriers (*e.g.*, traditional telephone land line and mobile telephone cellular networks) in connection with which they perform the following functions: signaling, communication circuit (channel) establishment, digitization of signals and encoding.

9. Signaling (*i.e.*, dialing) is the exchange of control information (*e.g.*, the telephone number/MSISDN dialed by the transmission originator) for the establishment and control of a telecommunication circuit between the transmitting device and the receiving device for the subsequent transmission of the SMS message (*i.e.*, the sending of a signal from the transmitting end of a telecommunication circuit to inform the receiving end that a SMS message is to be sent). PSTN telephone calls generally use Signaling System No. 7 ("SS7") protocols for signaling. In this way, autodialer systems, like typical telephones, would use SS7 protocols to send signals (including control information associated with the target telephone's MSISDN) in order to establish a telecommunications circuit prior to the transmission of the content (*e.g.*, SMS message).

10. Air2Web is one of a limited number of Tier 1 mobile messaging aggregators ("Tier 1 Aggregators"). Tier 1 Aggregators have direct, contractual relationships with some or all of the major Carriers (*i.e.*, AT&T, Sprint, T-Mobile and Verizon) and other smaller Carriers. Pursuant to such contractual relationships, Tier 1 Aggregators establish and maintain unique, direct connections ("Binds") to the Carriers' networks (*i.e.*, the Carriers' SMSCs) and transmit content through such Binds in accordance with industry standard guidelines for communication (*e.g.*, the SMPP protocol).

11. Pursuant to its contractual relationships with the Carriers, Air2Web maintains direct Binds to Carriers' SMSCs and transmits the Content through such Binds in the SMPP protocol. The Binds are persistent socket connections (*i.e.*, the connections are always open).

Thus, unlike autodialers, Air2Web's system does not signal to establish a telecommunications circuit. Specifically, Air2Web's system does not have access to the PSTN/SS7 protocol network and, thus, transmits Content outside of the PSTN/SS7 protocol network. Independently, the Carriers may then transmit the Content from their SMSCs to their Subscribers including via the PSTN/SS7 protocol network.

12. Air2Web's system does not include, and has not been paired in the previous two years with, hardware or software that has the capacity to dial numbers to be called at random, in sequential order, or from a database of numbers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of October, 2013.

Harvey Scholl, CTO of Air2Web, Inc.