

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

Petition of Public Knowledge et. al for Declaratory)
Ruling Stating Text Messaging and Short Codes are) WT Docket No. 08-7
Title II Services or are Title I Services Subject to)
Section 202 Nondiscrimination Rules)

To: The Commission

CTIA® REPLY COMMENTS IN OPPOSITION

Thomas C. Power
Senior Vice President and General Counsel

Scott K. Bergmann
Vice President, Regulatory Affairs

Brian M. Josef
Assistant Vice President, Regulatory Affairs

CTIA®
1400 16th Street, NW, Suite 600
Washington, DC 20036

December 21, 2015

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EXECUTIVE SUMMARY

The record compiled in response to Twilio's Petition makes two points abundantly clear. First, mobile messaging is a wildly successful communications platform. It is also among the most highly trusted, with dramatically lower levels of unwanted and unlawful traffic than email or other analogous offerings. Messaging's popularity and its trustworthiness go hand-in-hand: It is precisely because the messaging environment remains relatively unpolluted that consumers read nearly all their messages, why they rely on messaging over email and other alternatives for notifications regarding time-sensitive matters, and why companies prefer messaging over other mechanisms to facilitate two-factor authentication for consumer access to important online accounts. The result that Twilio and its allies seek here would open the floodgates to unwanted and unlawful mass messages, destroying the trust that messaging has won over the course of more than a decade and decimating the value these services provide to end users.

Second, there is no legal basis whatsoever for imposing a Title II framework. Twilio's supporters recognize as much, foregoing any real effort to demonstrate that mobile messaging offerings and Short Codes are telecommunications services. As they must acknowledge, messaging involves the storage, retrieval, and transformation of information, and these offerings are inherently intertwined with the transmission involved. It is thus an information service. Short Codes are not a communications offering at all, but rather involve the provision of an addressing function combined with the ability to reach numerous end users – but only via a separately purchased service.

Several commenters supporting Twilio's Petition present a selective and skewed narrative that ignores consumer protection concerns in favor of the needs of specific business models, some of which have a history of transmitting harmful spam. As CTIA made clear in its Comments in Opposition, the Commission should see through such self-serving arguments and recognize the tremendous consumer interests at stake in this proceeding.

In particular, some commenters have offered a variety of anecdotes regarding so-called "blocking" of messages. In truth, what they describe is the application of spam filtering designed to protect consumers from unwanted mass messages. Providers have applied such filtering to weed out unwanted, automated traffic from the traditional person-to-person ("P2P") messaging environment. To enable application-to-person ("A2P") messaging solutions, the Common Short Code system was introduced, allowing pre-clearance of mass messaging campaigns. Now, however, Twilio and others have begun to provide high-volume A2P traffic – "hybrid" traffic – without the use of Short Codes, and without the attendant pre-clearance review to help protect consumers. Because these messages are not subject to the Short Code review process, they instead are subject to practices associated with traditional ten-digit messaging traffic, including spam filters. In short, some mass messaging campaigns are subject to filters because content providers are using ten-digit long codes for bulk messaging and bypassing the review processes put in place years ago to protect consumers.

To be clear, the wireless industry is committed to enhancing messaging offerings. Over the years CTIA has worked with the broader messaging ecosystem to develop policies that embrace innovation while protecting consumers. Most recently, in the Spring of 2015 CTIA

convened and is overseeing an ecosystem-wide, multistakeholder process designed to enable hybrid traffic to reach those who wish to receive it while continuing to protect consumers from unwanted and unlawful traffic. This process is already working to address issues raised in the record and promote continued growth of messaging services. Twilio's requested relief, in contrast, would undermine rather than promote consumer interests.

Finally, the record makes clear that the Commission would be acting arbitrarily if it were to classify only messaging and/or Short Codes as Title II services yet leave over-the-top ("OTT") messaging services and email subject to different regulatory treatment. OTT messaging is now more popular, and both OTT messaging and email are functionally identical to wireless provider-offered messaging services. Disparate classification would be legally untenable as well as unsupportable as a matter of public policy, resulting in unwarranted competitive distinctions that would warp development of the marketplace and disserve consumer interests.

For these legal and policy reasons, the Commission should deny the Twilio Petition.

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I. INTRODUCTION.

The messaging marketplace is just one massively popular example of how America’s world-leading wireless industry continues to deliver the ever-expanding content and services that consumers demand. As in every other sector of the mobile economy, the messaging environment changes rapidly as investments flow, technologies advance, and innovations roil. While traditional consumer messaging services and the Common Short Code system continue to thrive, new application-based messaging technologies are generating new mass messaging opportunities that also exacerbate consumer concern about unwanted or unlawful messaging. The wireless industry is working to enable new business models and remains equally committed to delivering the messages consumers want and filtering out unwanted and malicious mass messages. Grant of Twilio’s Petition¹ will impede consumer protection, while doing nothing to promote the public interest.

¹ Petition for Expedited Declaratory Ruling of Twilio Inc., WT Docket No. 08-7 (filed Aug. 28, 2015) (“Petition”).

Messaging offerings have developed in an environment governed by collaborative multistakeholder guidelines and best practices, which have fostered messaging's mammoth scale and continued innovation. Consumers have come to rely on messaging because it is immediate and because they need not wade through waves of deceptive and unwanted messages (of the sort that often typifies email) to reach the content they wish to receive. This trusted environment is not an accident – the industry-driven model has ensured that consumers see little, if any, messaging spam. Wireless providers have every reason and incentive to continue to ensure that mobile messaging remains a highly valued offering and continues to provide consumers with tangible and growing benefits.

Twilio's Petition, however, would undo the key benefit of mobile messaging – its trusted nature – by imposing an unwise and unlawful common-carrier regime that would sharply curtail efforts to combat spam, and thus badly undermine messaging's value to consumers. Twilio's arguments are wholly without merit, as the opening comments make clear. As a legal matter, not a single commenter disputes the fact that mobile messaging's storage, retrieval, and processing capabilities render it a quintessential integrated information service. Only one set of comments attempts to make a legal case for Title II, and those comments ignore these fundamental features.² Other commenters simply ask for Title II obligations under a "telecommunications service" classification without bothering to explain how it could be warranted. Likewise, no commenter can demonstrate that the Short Code system is a communications offering at all. And for good reason: It is not.

Nor do commenters present valid policy rationales for a telecommunications service classification. They offer no response to the problem of messaging spam under a Title II

² See Comments of Public Knowledge, Common Cause, and Free Press, WT Docket No. 08-7 (filed Nov. 20, 2015) ("Comments of Public Knowledge *et al.*").

approach, no way to square Twilio’s request with the Commission’s interpretations of the Telephone Consumer Protection Act (“TCPA”), and no justification for the competitive disparity and distortion that would result from subjecting wireless provider-offered messaging to a different regulatory regime than applies to functionally identical over-the-top (“OTT”) services and email. And their regulatory approach would subject wireless provider-offered messaging to the full panoply of Title II, imposing dozens of statutory provisions and hundreds of codified rules.

That is not to say that the evolution in messaging has progressed without challenges. In fact, both technological advancements and new business models often generate both opportunities and risks. For the past several years, CTIA has convened the messaging ecosystem in a collaborative, multistakeholder forum to revise the SMS/MMS Interoperability Guidelines, with special attention to fostering service innovation while maintaining strong consumer protections. As discussed further below, in the Spring of 2015, CTIA convened working groups to develop consensus-driven solutions that balance application providers’ interests in new mass messaging business models with consumers’ needs for protection against spam and other unwanted or unlawful messages. This ongoing process is far more likely to improve the messaging ecosystem for all stakeholders than the sweeping and legally suspect regulatory regime sought by Twilio. The Commission should let the collaborative system work, place consumers’ interests ahead of those of Twilio and its allies, and reject Twilio’s Petition.

II. THE RECORD SHOWS THAT TRUSTED MESSAGING SERVICES ARE IMMENSELY POPULAR, BUT GRANT OF TWILIO’S PETITION RISKS AN EXPLOSION OF SPAM JEOPARDIZING MESSAGING’S SUCCESS.

A. A Title II Framework Would Undermine the Spam-Free Nature of Messaging.

America’s messaging services are a tremendous consumer success story, and there is no reason to upend them. Commenters overwhelmingly recognize the value that messaging provides as a communications medium, largely because it is spam-free. As Voxiva, provider of Text4Baby, explains: “The reason the[se] services work is because individuals trust them. Text is personal. Text stresses immediacy. Text is spam free.”³ DoSomething.org, an organization that promotes volunteering, relies on text messages for the majority of its business and observes, “[w]e’ve learned that one of the reasons text messaging is so valuable in activating our members is because it is relatively spam-free and users trust the medium.”⁴

Today, wireless providers are largely successful in filtering out unwanted and unlawful messaging traffic. Wireless providers use a variety of techniques to protect consumers, including tools in anti-abuse industry guidelines and best practices that seek to limit spam and other

³ Comments of Voxiva Inc., WT Docket No. 08-7, at 1 (filed Nov. 19, 2015) (“Comments of Voxiva”).

⁴ Comments of Marah Lidey, WT Docket No. 08-7, at 1 (filed Nov. 20, 2015) (“Comments of DoSomething.org”). *See also* Comments of the American Consumer Institute, WT Docket No. 08-7, at 3 (filed Nov. 18, 2015) (“Comments of American Consumer Institute”) (noting that “consumers can rely on these services to be generally free and ‘safe and trusted’ communications.”).

unwanted messages.⁵ These efforts are expected to shield consumers from an estimated 1.3-1.6 billion messages in 2015.⁶

Imposing a common carriage framework on wireless provider-offered messaging would disrupt these efforts to protect consumers from unwanted messages. As the American Consumer Institute explains:

[M]aking messaging services subject to Title II regulations would jeopardize efforts by wireless providers to restrict spam and unwanted messages. That regulatory change will expose consumers to greater risk and possibly affect consumer reliance on this form of communications.⁷

Application of Sections 201 and 202 would leave consumers at the mercy of spammers and others launching unwanted and unlawful messages. The National Organization of Black Elected Legislative Women (“NOBEL Women”) cites the importance of mobile communications to communities of color and opposes Twilio’s Petition, as a Title II regime “would unleash a torrent of unwanted spam messages to consumers’ text inboxes.”⁸ And the volume of messages filtered today likely represents a small fraction of the traffic that spammers will send if the FCC grants Twilio’s Petition. As Verizon explains, “there is every reason to expect that spammers would refocus their efforts on mobile messaging if providers were handicapped in their ability to

⁵ See, e.g., Messaging, Malware and Mobile Anti-Abuse Working Group, M³AAWG Mobile Messaging Best Practices for Service Providers (Aug. 2015) <https://www.m3aawg.org/sites/default/files/M3AAWG-Mobile-Messaging-Best-Practices-Service-Providers-2015-08.pdf> (last visited Dec. 18, 2015).

⁶ Opposition of CTIA – The Wireless Association®, WT Docket No. 08-7, at 20 (filed Nov. 20, 2015) (“Opposition Comments of CTIA”).

⁷ Comments of American Consumer Institute at 3.

⁸ Reply Comment of the National Organization of Black Elected Legislative Women, WT Docket No. 08-7, at 1 (filed Dec. 14, 2015).

prevent spam messages from reaching consumers.”⁹ Given the “growing risk” of spam, DoSomething.org’s comments focus on the real-world impact of a grant of Twilio’s Petition: “If carriers are unable to filter out scammers and other unsolicited messages, we will have a harder time activating our member base to volunteer.”¹⁰

Those supporting the Twilio Petition fail to explain how wireless providers or consumers will be able to prevent spam under a Title II regime. While Public Knowledge *et al.* highlight consumers’ reliance on messaging, their 19-page comments do not even *mention* spam, let alone address the impact that Title II would have on wireless providers’ ability to restrict spam messages. Zillow says text messaging “has become integral to the satisfaction of our customers and the success of our business,”¹¹ but it neglects to consider how a Title II-driven spam-filled messaging environment will impact its customers and its business. One need look no further than one’s own personal email account to see the potential impact of Twilio’s Petition on mobile messaging.

Other solutions are inadequate. As CTIA noted in its Comments in Opposition, the TCPA is a post hoc remedy that “cannot undo the harm once unwanted or malicious traffic has been sent.”¹² Voxiva adds that the TCPA is not much of a deterrent to organizations involved in

⁹ Comments of Verizon, WT Docket No. 08-7, at 7 (filed Nov. 20, 2015) (“Comments of Verizon”).

¹⁰ Comments of DoSomething.org at 1. *See also* Comments of Voxiva at 1 (“If text messaging services were governed by Title II of the Communications Act, it may restrict the ability of the wireless industry to take action to block a messaging provider if abuse is detected. We believe this would be bad for consumers in general and impact their trust in programs such as those that we operate.”).

¹¹ Comments of Zillow Group, Inc., WT Docket No. 08-7, at 2 (filed Nov. 20, 2015) (“Comments of Zillow”).

¹² Opposition Comments of CTIA at 18.

scams or fraudulent activities.¹³ Further, consumer tools to prevent spam in the absence of provider-based tools are no panacea. As Verizon observes, “software-based tools only work for customers that are aware of them and have sufficient technological savvy to implement them.”¹⁴ While email services employ spam filters, “[t]hose types of filters require constant attention, because spammers quickly learn to tweak their messages to get through the filters.”¹⁵ Imposing that type of “solution” would saddle consumers with a significant burden, undermining the value of mobile messaging and likely proving ineffective in any case.

Leading OTT provider WhatsApp’s experience grappling with a growing spam problem by applying measures quite similar to those under attack here further demonstrates that there is nothing unique or nefarious in wireless providers’ efforts to curb abusive messaging practices. As wireless providers have achieved success in protecting their customers from harmful and unwanted messaging, bad actors appear to have shifted toward strategies relying on OTT platforms such as WhatsApp. Thus, according to network security provider Adaptive Mobile, WhatsApp now has “a functioning and active spam ecosystem, and the contributors to this spam are being affected by and coming from other messaging systems.”¹⁶

WhatsApp, in turn, is taking a hard line in efforts to wipe out spam. Among other things, it has imposed a flat bar against bulk messaging, as made clear in its terms of service: “You agree not to use or launch any automated system ... that accesses the Service in a manner that sends more request messages to the WhatsApp servers in a given period of time than a human

¹³ Comment of Voxiva at 2.

¹⁴ Comments of Verizon at 12.

¹⁵ *Id.*

¹⁶ Cathal McDaid, *HeadsUp for WhatsApp*, Adaptive Mobile (Jan. 15, 2015), <http://www.adaptivemobile.com/blog/headsup-for-whatsapp> (“Adaptive Mobile blog”).

can reasonably produce in the same period by using a WhatsApp application.”¹⁷ WhatsApp also bans any “commercial solicitation” using its service.¹⁸

Whereas WhatsApp’s absolute ban on mass traffic and commercial solicitation sweeps in legitimate mass traffic, wireless providers have developed means of filtering unwanted or unlawful traffic while permitting legitimate bulk messaging and commercial services. The Short Code system is available on all wireless providers’ messaging services and permits lawful, appropriate commercial messaging provided the consumer has opted in. Moreover, the wireless messaging ecosystem is working collaboratively to enable new hybrid business models for additional application-to-person (“A2P”) traffic.

Both mobile messaging and OTT messaging are committed to protecting consumers and at times their filtering methods will trigger false positives. There is a balancing involved and, as Adaptive Mobile notes regarding WhatsApp’s anti-abuse regime, “[o]ptimisation of these restrictions to prevent false positives is likely to be a long-term effort.”¹⁹ This holds true for wireless provider messaging as well. WhatsApp’s commitment to guarding against spam abuse, just like the objective of wireless providers, further undermines Twilio’s claim that wireless providers filter bulk messaging simply to shift A2P traffic to Short Codes.²⁰

The WhatsApp experience demonstrates that combatting spam is akin to a game of “whack-a-mole” in both the mobile messaging and OTT worlds. Any effort to impose common carrier obligations on wireless providers will only create more and better opportunities for spammers to direct their abusive practices to wireless provider messaging.

¹⁷ WhatsApp, Legal Info, Terms of Service, <https://www.whatsapp.com/legal/> (last visited Dec. 20, 2015).

¹⁸ *Id.*

¹⁹ Adaptive Mobile blog.

²⁰ *See* Petition at 18.

B. A Title II Framework Would Contradict the Policies Underlying the Commission’s Recent TCPA Ruling.

Grant of Twilio’s Petition would be particularly perplexing in light of the Commission’s recent effort to “protect[] wireless consumers from the costs and privacy intrusions of unwanted voice calls and text messages.”²¹ As AT&T notes, “[t]he Commission has recently condemned and taken steps ... to combat the considerable consumer harms caused by unwanted calls and text messages,” whereas Twilio “invite[s] those very harms” by asking the Commission “to dismantle the existing protections for limiting abusive and deceptive text messaging.”²² The Commission cannot reasonably take such action here, only months after it took aggressive action to stop unwanted robocalls, including texts.²³

As the record makes clear, new mass-messaging technologies and falling prices provide spammers with an increasingly strong platform from which to work.²⁴ Voxiva explains that “text messaging can be cheap and therefore tens of thousands of messages can be sent for a few dollars.”²⁵ For example, “at the most basic level,” spammers could run a scheme using only “a pre-paid SIM card ... placed inside a GSM model and attached to a computer running a software algorithm that sends messages,”²⁶ resulting in tens of thousands of unwanted messages sent for minimal cost.

²¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8021 ¶ 118 (2015) (“*Omnibus TCPA Order*”).

²² Comments of AT&T Inc., WT Docket No. 08-7, at 2 (filed Nov. 20, 2015) (“Comments of AT&T”).

²³ *Omnibus TCPA Order*, 30 FCC Rcd at 7964 ¶ 1.

²⁴ See, e.g., Opposition Comments of CTIA at 2-3.

²⁵ Voxiva Comments at 2.

²⁶ *Id.*

Given this danger, the approach Twilio requests is fundamentally at odds with the agency's efforts to curb spam. Indeed, the *Omnibus TCPA Order* established a *de facto* strict liability regime for senders of unauthorized messages in an effort to curtail such messages.²⁷ Although CTIA believes the agency went too far in this regard,²⁸ it agrees that unwanted messages are a problem and supports efforts to minimize spam. And grant of the Twilio Petition would substantially exacerbate the problem that unwanted messages pose.

Under the current framework, wireless providers engage in substantial, and largely successful, efforts to limit unwanted messages. To this end, the *Omnibus TCPA Order* commended "carrier efforts to implement protections against unwanted text messages[.]"²⁹ Without these wireless provider efforts, messaging spam could well become an insurmountable problem for consumers. Accordingly, grant of the Petition would invariably conflict with the Commission's goals.

C. A Title II Framework is Unnecessary and Would Hamper the Messaging Marketplace.

Beyond issues of unwanted or unlawful messages, neither Twilio nor commenters in favor of Title II even acknowledge the many additional costs and uncertainties that would flow from classifying messaging as a Title II service. Because messaging traffic is not broadband

²⁷ See *Omnibus TCPA Order*, 30 FCC Rcd at 8080 (dissenting statement of Commissioner Ajit Pai).

²⁸ See Brief for Amicus Curiae CTIA—The Wireless Association® in Support of Petitioners, *ACA International v. FCC*, No. 15-1211 (D.C. Cir., Dec. 2, 2015). CTIA does not dispute that Order's premise that unwanted messages harm consumers, but grant of the Twilio Petition would swing the pendulum too far in the direction of allowing all messages to reach consumers, subjecting users to scores of unwanted and often fraudulent messages.

²⁹ *Omnibus TCPA Order*, 30 FCC Rcd at 8021 ¶ 119.

Internet access, the 2015 *Open Internet Order*'s³⁰ forbearance grants would not apply.³¹

Classification of messaging as a telecommunications service would impose on such offerings dozens of statutory provisions and hundreds of codified rules, putting mobile messaging at a clear disadvantage vis-à-vis other similar services, such as OTT messaging and email.

The harms that would flow from common carrier treatment of messaging are especially unwarranted given that there would be virtually no associated benefits. Twilio struggles to liken the issues presented here to those addressed in the *2015 Open Internet Order*,³² and the comparison is inapt. The Commission's open Internet framework was premised in part on the agency's view that regulation of broadband providers' activities would ensure that "innovations at the edges of the network enhance consumer demand, leading to expanded investments in broadband infrastructure that, in turn, spark new innovations at the edge."³³ CTIA does not endorse the view that by inhibiting innovation among broadband providers, government will fuel innovation among edge providers and drive more investment in the network. In the context of messaging, moreover, this type of rationale is equally invalid. As the record makes clear, other entities in the messaging ecosystem – including content companies, OTT providers, and hybrid messaging originators – have benefited from great innovation throughout the marketplace. One result has been that vast quantities of messaging traffic have shifted to OTT services delivered over broadband data networks, which now carry far more messages than wireless providers'

³⁰ *Protecting and Promoting the Open Internet*, Report and Order and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) ("*Open Internet Order*").

³¹ See Opposition Comments of CTIA at 28.

³² See, e.g., Petition at 29-30.

³³ *Open Internet Order* at 5604 ¶ 7.

messaging services.³⁴ Applying the *Open Internet Order*'s theory, the Commission would now regulate wireless provider messaging to encourage more edge provider use of SMS and MMS and drive wireless investment into SMS and MMS, and away from mobile broadband that enabled the OTT messaging market to eclipse wireless provider messaging in the first place. This makes no sense.

Likewise, the *Open Internet Order*'s concerns regarding broadband providers' purported "terminating monopoly"³⁵ do not apply in the context of messaging. As described at length in the record and above, content providers seeking to send messages are not limited to the offerings of mobile providers themselves. Rather, OTT messaging services have become more popular and widely used than those of the mobile providers themselves. Thus, a user who has signed up with a given carrier is not limited to that carrier's messaging practices – rather, that user can also receive messages on her mobile device (and/or other devices) delivered by third-party services. This is true even with respect to bulk messaging: While entities such as WhatsApp have prohibited mass messaging, bulk messaging providers have begun to use WhatsApp and similar services to distribute their content.³⁶ Finally, even if not for the multiplicity of third-party OTT providers, there can be no serious claim of a terminating monopoly in the fiercely competitive

³⁴ See, e.g., Verizon Comments at 4-5 (stating that, last year, users sent 1.92 trillion text and 152 billion picture messages over wireless provider-offered messaging services – "less than a third of the volume of messages that the most popular OTT messaging application – WhatsApp – carried over the same period").

³⁵ See, e.g., *Open Internet Order* at 5630 ¶ 80 n.130.

³⁶ See, e.g., Bulk WhatsApp Sender, Download WhatsApp Bulk Sender & Bulk WhatsApp Sender, <http://bulkwhatsappsender.com/> (last visited Dec. 20, 2015); B-WhatsApp, B-WhatsApp - The Most Complete & Popular Platform For WhatsApp Bulk And API Messaging Advertising Around The Globe, <http://b-whatsapp.com/main/> (last visited Dec. 20, 2015); Reverse Station, WhatsApp Marketing Software, <http://www.reversestation.com/> (last visited Dec. 20, 2015). The fact that WhatsApp and other OTT applications are attempting to block bulk messaging providers does not transform wireless providers into "carriers of last resort" for spam and other bulk messaging.

mobile wireless marketplace, where at least 96.8 percent of Americans can choose among three or more service providers,³⁷ and customers can and do routinely switch providers. Under those circumstances, any entity that engaged in unreasonable behavior would quickly find its customers fleeing to its competitors.

III. THE CHANGING MESSAGING ECOSYSTEM MUST BE GUIDED BY THE DUAL GOALS OF EXPANDING MASS MESSAGING OPTIONS AND MAINTAINING CONSUMER PROTECTION.

A. The Evolution of Messaging Poses New Opportunities and New Risks that the Ecosystem Must Balance.

While innovation and technological change create tremendous opportunities, they also create new risks. The messaging ecosystem, under CTIA’s leadership, is tackling these consumer risks head on. The task is aided by the fact that we share common goals – deliver the messages consumers want and filter out those they don’t. As several commenters observe, however, the messaging marketplace is far better served by collaborative ecosystem-driven solutions than by sweeping new legal paradigms under Title II.

New “hybrid” business models have arisen for the delivery of mass messaging campaigns. These hybrid models typically involve the transmission of high-volume A2P messages through means traditionally used to send person-to-person (“P2P”) traffic – ten-digit telephone numbers – rather than through the Short Code system. For example, Twilio’s Messaging Copilot service enables high-volume messaging by “distribut[ing] messages evenly across a pool of long codes [to] decrease[] the risk of carrier filtering and number suspension.”³⁸

³⁷ *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd 15311, 15334, ¶ 48 (2014).

Because these campaigns typically are not subject to the type of content review associated with Short Codes, questions arise regarding how best to protect consumers from unwanted messages in this new environment.³⁹ The concern is not hypothetical. As CTIA pointed out in its Comments in Opposition, Twilio itself has been a conduit for spammers to exploit wireless consumers.⁴⁰

The rise of hybrid business models may implicate growing pains within the messaging ecosystem. Some commenters register concern that messages are arbitrarily blocked, and much of this traffic appears to be Twilio-generated messaging.⁴¹ Others offer up no claims of blocking but nonetheless support Twilio's Petition.⁴² At the outset, it is worth emphasizing that

³⁸ TWILIO, *Radical Skills – Twilio Messaging in Production: Messaging Best Practices: Messaging CoPilot*, <https://twilio.radicalskills.com/projects/messaging-in-production/2.html> (last visited Dec. 18, 2015).

³⁹ CallFire emphasizes that it incorporates a number of traffic screening practices to protect consumers from unwanted traffic. See Comments of CallFire, Inc., WT Docket No. 08-7, at 5 (filed Nov. 20, 2015) (“Comments of CallFire”). CallFire recognizes that messaging requires consumer protection, and acknowledges that it has enabled traffic that did not meet its terms of service. *Id.* at 7. Rather than having application-based messaging providers offer consumer protection solutions on an ad hoc basis, CTIA believes that *all* customers should be protected from *all* bad actors, and that consumer protections should therefore be administered on a network-wide basis. Grant of the Twilio Petition would preclude that outcome, to the detriment of consumers.

⁴⁰ Opposition Comments of CTIA at 5-6. Indeed, it is precisely because Twilio and other hybrid providers offer ten-digit mass-messaging as an alternative to Short Code program review that they are appealing to bad actors.

⁴¹ Remind101, ShowingTime, and Zillow Groups, for example, appear to rely on Twilio's services. TWILIO, *Remind101 Keeps Teachers in Touch with Students and Parents – Millions of Times a Day, Using Twilio SMS*, <https://www.twilio.com/customers/stories/remind101> (last visited Dec. 18, 2015); TWILIO, *Use Cases – Instant Lead Alerts: ShowingTime*, <https://www.twilio.com/use-cases/instant-lead-alerts> (last visited Dec. 18, 2015); TWILIO API, *IMPACT – Call to Close – Tim Correia (Trulia)*, <https://www.twilio.com/signal/2015/videos/call-to-close-how-trulia-s-instant-leads-went-from-a-hack-to-a-home-run>.

⁴² A handful of commenters from the non-profit community do not assert they have experienced blocking, but each use identical language calling for Title II: “We call on the Federal Communications Commission to declare that mobile messaging services are critical to the public

allegations concerning “blocking” do not concern the traditional person-to-person, or P2P, traffic traversing wireless provider and OTT messaging systems. There is broad agreement that any genuine wireless consumer can send a message to another user without concern that the message will be denied because of its content. Nor do blocking allegations concern messaging that is consistent with human-to-human messaging, even if application-generated.⁴³ The Twilio Petition is focused on A2P mass messaging campaigns, which traditionally were subject to the Short Code system with its associated content review. Importantly, the average consumer has never experienced a SMS filtering of their day-to-day messaging.

That said, there may be instances in which some A2P traffic sent in bulk using traditional ten-digit messaging rather than Short Codes does get caught in filtering that wireless providers rely on for preventing delivery of spam and other unwanted or unlawful messaging. In one commenter’s words, “P2P connectivity has volumetric spam algorithms in place as a first line of defense against spam which is what Twilio and other filers are referring to as ‘arbitrary blocking.’”⁴⁴

interest as telecommunications services under Title II of the Communications Act, and to protect users of text messages from unreasonable interference.” Comments of CareMessage, WT Docket No. 08-7, at 1 (filed Nov. 17, 2015); Comments of Polaris, WT Docket No. 08-7, at 1 (filed Nov. 20, 2015); Comments of Trek Medics International, WT Docket No. 08-7, at 1 (filed Nov. 17, 2015) (“Comments of Trek Medics International”).

⁴³ As CTIA’s SMS Interoperability Guidelines make clear, P2P messaging includes services with attributes consistent with typical human operation, such as throughput, message volume, the quantity of distinct recipients, and traffic balance. *See CTIA SMS Interoperability Guidelines*, Version 3.2.2, at 14-15 (Jan. 1, 2015). This includes messages that are forwarded from an application at the user’s specific request or after notice to the user and an opportunity to opt-out. *Id.* at 14. Thus, when certain commenters express concern about the threat of blocking, it is unclear how spam filtering would implicate their business model. *See, e.g.*, Comments of Trek Medics International at 1 (describing international SMS-based emergency dispatch platform).

⁴⁴ Comments of Zipwhip, Inc., WT Docket No. 08-7, at 1 (filed Nov. 20, 2015) (“Comments of Zipwhip”).

As application-based messaging providers introduce new business models for mass messaging, and send their messages outside the Short Code system, there are bound to be instances in which the traditional filtering that for years has applied to ten-digit number traffic affects these mass messaging campaigns. Consumers should continue to be protected from spam and other unwanted messages, and outside the *ex ante* Short Code review process, real-time spam filtering is a key element of anti-abuse best practices. As described below, however, stakeholders in the messaging ecosystem have been at work on new processes to limit spam while enabling the delivery of desired messages in the age of hybrid traffic. Just as industry came together to develop Short Codes to address prior challenges, the industry is working to find solutions that benefit all stakeholders and protect consumers.

B. A Multistakeholder Framework is Working to Find Solutions that Enable Hybrid Models While Protecting Consumers, Without the Need for Title II.

For years, CTIA has included all elements of the messaging ecosystem in efforts to foster innovation in the market while continuing to protect consumers. Under CTIA’s auspices, the messaging community formed working groups earlier this year to address whether and how application-based, hybrid messaging traffic can be integrated into the existing ecosystem without exposing consumers to greater risk of spam and unwanted or harmful messages.⁴⁵ These efforts are premised on a common goal: delivering the messages that consumers want and protecting them from those they don’t.

These working groups are open to all stakeholders in the messaging ecosystem. Twilio and commenter CallFire both have participated. CallFire concludes that “CTIA and its working

⁴⁵ See Comments of Verizon at 2 (noting that “[t]his industry-led process has in particular benefited companies like Twilio, which as a result are able to use their application platforms to send and receive large volumes of messages to and from wireless providers’ messaging customers, while those customers are still protected from spam”).

groups can achieve positive outcomes” on certain issues and commits to continue its participation in the ecosystem’s process.⁴⁶ Other commenters who criticize some current market practices nonetheless recognize that this multistakeholder solution is preferable to the imposition of Title II common carrier requirements. For example, the Voice on the Net (“VON”) Coalition, despite concerns about some aspects of the messaging marketplace, urges the Commission to refrain from pursuing Title II classification. Instead, it “encourage[s] messaging industry participants to resolve these matters voluntarily.”⁴⁷

The working groups are charged with developing consensus on several issues, including identification of specific use cases and traffic classes arising from hybrid messaging’s growth that will allow all service providers to deliver an optimal consumer experience and efficient traffic/network management. The working groups are also responsible for developing best practices that every messaging service provider should follow with respect to other service providers. The evolving revisions to the industry’s messaging guidelines will provide clarity as new business models arise.

Even as stakeholders work towards broad, ecosystem-wide solutions, application messaging providers have introduced new solutions that enable ten-digit number-based, high-volume traffic messaging services in a consumer-protected framework. Zipwhip, for example, has worked with the wireless providers to enable a high-volume traffic messaging solution for toll-free numbers that allows for up to 1,000 messages per second while providing anti-spam

⁴⁶ Comments of CallFire at 8.

⁴⁷ Comments of the Voice on the Net Coalition, WT Docket No. 08-7, at 9 (filed Nov. 20, 2015) (“Comments of the VON Coalition”). *See also* Comments of DoSomething.org at 1 (“While we don’t believe that the current system is perfect, we believe that allowing carriers to continue to regulate this medium in union with the CTIA protects the quality of the messages that are distributed and therefore protects our users.”).

measures.⁴⁸ With this new alternative, “call centers can now promote CALL OR TEXT as their main call to action on consumer-facing toll free support lines. Businesses can finally address the growing demand of consumers preferring text over voice.”⁴⁹ Zipwhip is expanding this high-volume service to all ten-digit numbers. As Zipwhip explained in its comments, “[a]ny provider who uses the P2P ecosystem, Twilio included, has the option to move to [the high-volume system] to gain a higher class of service where volumetric spam catching no longer occurs.”⁵⁰ This is just one example of the evolving ten-digit number-based mass messaging marketplace.

Of course, use of Short Codes for mass messaging campaigns is the original solution for delivering appropriate and lawful A2P traffic while protecting consumers from massive quantities of unwanted traffic. Some commenters assert that Short Codes are not a good option because they do not permit conversation threads,⁵¹ but this is incorrect. Software providers such as Mobile Commons can – and do – enable functionality that allows for Short Code-initiated one-on-one, threaded “customer service” interactions.

Like the rest of the mobile ecosystem, the Short Code system itself continues to evolve. Overall, the Short Code program works efficiently, enabling mass messaging campaigns while providing important consumer protections. CTIA and its members have been working to improve and expedite this process to enhance the timeliness and transparency of our procedures.

For example, as noted in CTIA’s Comments in Opposition, CTIA and the Mobile Marketing

⁴⁸ Press Release, Zipwhip Toll Free Texting Now Supports 1,000 SMS/Second, <http://www.reuters.com/article/idUSnMKW3XyNra+1d4+MKW20150924#q1pgX7EYq9WgpDgv.97> (last visited Dec. 18, 2015).

⁴⁹ *Id.*

⁵⁰ Comments of Zipwhip at 1. Zipwhip’s terms of service explain that the company “works with a market leading digital security firm to monitor for and prevent spam.” Zipwhip Terms of Service, <http://zipwhip.com/legal> (last visited Dec 20, 2015).

⁵¹ *See* Comments of ClearCare, Inc., WT Docket No. 08-7, at 2 (filed Nov. 6, 2015); Comments of CallFire at 5-6.

Association formerly promulgated separate guidelines for acceptable Short Code campaigns, but in 2012 they harmonized their materials in the CTIA Short Code Monitoring Handbook. The most recent version of the Short Code Monitoring Handbook, published October 1, 2015, offers streamlined, straightforward, and simpler guidance.⁵² This is an evolving and improving system that continues to benefit from feedback from all stakeholders including consumers. Forcing a heavy-handed regulatory solution risks a less collaborative and more static approach to future challenges that will undermine messaging services going forward.

IV. THE COMMUNICATIONS ACT DICTATES THAT MESSAGING IS NOT A TITLE II “TELECOMMUNICATIONS SERVICE,” AND THERE ARE NO REMOTELY CREDIBLE ARGUMENTS OTHERWISE.

A. Messaging is an Integrated Information Service and Cannot be Subject to Common Carriage Regulation.

Twilio and its supporters might want the Commission to impose Title II on wireless provider-offered messaging services to meet their business goals, but the express terms of the Communications Act of 1934, as amended (“Act”), bar their request. Indeed, almost no commenter even attempts to address the insuperable legal impediments to the outcome Twilio seeks.

At the outset, Public Knowledge *et al.* are wrong in arguing that messaging is common carriage simply because it involves transmission and is offered to all wireless consumers.⁵³ That is not the test that Congress prescribed. Section 3(51) of the Act establishes that a telecommunications carrier is subject to common carrier regulation only to the extent it is

⁵² See CTIA, Short Code Monitoring Handbook (Oct. 1, 2015), http://media.wix.com/ugd/9456a5_fe407d1591744a49a957eed8f36277b9.pdf.

⁵³ Comments of Public Knowledge *et al.* at 9-10.

providing telecommunications services.⁵⁴ As the D.C. Circuit has held repeatedly, a service classified as an information service cannot be subjected to common carrier duties.⁵⁵ Yet Public Knowledge *et al.* ignore the record developed in this proceeding since 2008 establishing that messaging is an information service and thus statutorily immune from Title II common carrier regulation.⁵⁶

As multiple commenters explain, messaging is an information service because it involves data storage and retrieval and computer processing that changes both the form and content of messages.⁵⁷ These characteristics are the hallmarks of an information service.⁵⁸ Furthermore, the transmission component of messaging is inherently intertwined with the data storage and computer processing functionalities to make one single, integrated information service, not a singular telecommunications service or an information service provided alongside a severable telecommunications service.⁵⁹ Nothing in the *Open Internet Order* alters this analysis. Indeed,

⁵⁴ The Act states that “[a] telecommunications carrier shall be treated as a common carrier . . . only to the extent that it is *engaged* in providing telecommunications services” 47 U.S.C. § 153(51) (emphasis added). Because messaging is not a telecommunications service, Title II common carrier regulation is flatly prohibited.

⁵⁵ See *Verizon v. FCC*, 740 F.3d 623, 655-59 (D.C. Cir. 2014); *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1484 (D.C. Cir. 1994).

⁵⁶ See, e.g., Comments of CTIA, WT Docket No. 08-7, at 32-40 (filed Mar. 14, 2008); Comments of AT&T, WT Docket No. 08-7, at 9-12 (filed Mar. 14, 2008); Comments of T-Mobile, WT Docket No. 08-7, at 13-20 (filed Mar. 14, 2008); Comments of Verizon Wireless, WT Docket No. 08-7, at 30-36 (filed Mar. 14, 2008).

⁵⁷ Opposition Comments of CTIA at 35-39; Comments of AT&T at 7-9; Comments of Verizon at 15-17.

⁵⁸ 47 U.S.C. § 153(24) (defining an information service as providing a “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications”).

⁵⁹ Opposition Comments of CTIA at 39-42.

the *Open Internet Order* confirms that store-and-forward services such as messaging and email are information services.⁶⁰

Messaging also is not a commercial mobile radio service (“CMRS”), because it is not interconnected to the public switched network. As Verizon correctly notes, messaging subscribers “cannot send text or picture messages to landline phones – without an intermediary service – or to any of the billions of IP addresses that the Commission held in the *Open Internet Order* are part of the public switched network.”⁶¹ Messaging thus cannot be deemed a close substitute to CMRS, and no party has made or could make such a showing.⁶² Further, this lack of “ubiquitous access” means that messaging cannot be deemed the functional equivalent of CMRS, even under the Commission’s alternative definition.⁶³

Finally, the argument that messaging is subject to all of Title II because messages are deemed “calls” under the TCPA is wrong.⁶⁴ As CTIA and others explained, the TCPA applies to those making a “call” – not the underlying providers.⁶⁵ This fact alone demonstrates that the TCPA and the Commission’s TCPA rules provide no basis for classifying text messages as Title II services. Moreover, the fact that a message is a “call” for TCPA purposes does not render it a

⁶⁰ See *Open Internet Order*, 30 FCC Rcd at 5763, n.1005 (2015).

⁶¹ Comments of Verizon at 17. As the Commission knows, CTIA is currently challenging, *inter alia*, the *Open Internet Order*’s interpretation of the term “interconnected” as used in Section 332. See Joint Brief of Petitioners USTelecom et al., *United States Telecom Ass’n v. FCC*, Case No. 15-1063, at 64-66 (D.C. Cir. July 30, 2015). Of course, if the D.C. Circuit agrees with CTIA and reinstates the requirement that, to be deemed “interconnected,” a service must “gives subscribers the capability to communicate to or receive communication from all other users on the public switched network,” 47 C.F.R. § 20.3 (superseded), that will render CTIA’s argument here even stronger, because messaging certainly does not do so.

⁶² 47 C.F.R. § 20.9(14)(ii).

⁶³ Comments of Verizon at 17.

⁶⁴ Petition at 26-29; Comments of Public Knowledge *et al.* at 11.

⁶⁵ Opposition Comments of CTIA at 46-47; Comments of AT&T at 11; Comments of Verizon at 20-21.

“telecommunications service” – the different terms used in Title II have different meanings and cover different services. Likewise, the fact that messaging may be bundled with voice and data services fails,⁶⁶ as well-established Commission precedent dictates that identical regulation does not apply to several services simply because they are sold together (and even used through the same device).⁶⁷

B. Neither Title III Nor the Commission’s Ancillary Jurisdiction Supports the Result Sought by Petitioners.

While we agree with the VON Coalition that the FCC should encourage industry to resolve issues voluntarily, the VON Coalition is incorrect in asserting that the Commission can rely on Titles I and III to apply common carrier requirements to messaging.⁶⁸ The D.C. Circuit in *Cellco* held that the Act’s bar against applying common carrier obligations to information services precludes use of Title III to impose common carrier requirements.⁶⁹ *Verizon* confirmed this point.⁷⁰ Thus, the VON Coalition’s assertion that the Commission can apply the same jurisdictional analysis that it applied in the *Bounce-Back Order* and *Text-to-911 Order* is erroneous. In neither of those decisions did the Commission confront the “critical issue”⁷¹ of whether it was imposing a common carrier obligation on an information service or not. In

⁶⁶ Comments of Public Knowledge *et al.* at 11.

⁶⁷ See *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7295-96 ¶¶ 14-15 (2006) (“[M]erely packaging two services together does not create a single integrated service,” and where there is “simply ... no functional integration between the information service features and the use of the telephone calling capability,” the offering is not “‘sufficiently integrated’ to merit treatment as a single service.”).

⁶⁸ Comments of the VON Coalition at 6-9.

⁶⁹ See *Cellco P’ship v. FCC*, 700 F.3d 534, 544-45 (D.C. Cir. 2012).

⁷⁰ *Verizon*, 740 F.3d at 655-59. Public Knowledge *et al.* appear to concede that Title I is not a legally viable option under *Verizon*. Comments of Public Knowledge *et al.* at 9.

⁷¹ *Cellco P’ship*, 700 F.3d at 544.

contrast, the obligations set forth in sections 201 and 202 (as sought here) constitute the “sine qua non” of common carriage, as the Commission and the courts have recognized.⁷²

C. Common Short Codes Do Not Involve the Offering of a Communications Service.

Public Knowledge *et al.* assert that the Commission has the authority to regulate the availability of Short Codes because they are interconnected with North American Numbering Plan (“NANP”) numbers and are therefore a common carrier service, but this is wrong.⁷³ CTIA and others demonstrated that Short Codes are not a communications service at all because none of the functions involved in Short Code provisioning involve the transmission of information.⁷⁴ As Verizon and AT&T explain, a Short Code is not a telephone number, nor is it a message; rather, it is merely an abbreviated address “that is used to identify messages sent or received over wireless providers’ messaging services.”⁷⁵ Furthermore, as AT&T correctly notes, the provisioning and activation of short codes for a third party by a wireless provider does not involve the offer or supply of a transmission service.⁷⁶

D. Other Arguments Supporting Title II Regulation are Inapposite.

The First Amendment. Public Knowledge *et al.* are misguided in suggesting that spam filtering implicates individuals’ free speech rights under the First Amendment.⁷⁷ As a purely legal matter, the First Amendment limits the *government’s* ability to intrude upon private parties’

⁷² See e.g., *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205, 210 n.5 (Third Cir. 2007), quoting *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976).

⁷³ Comments of Public Knowledge *et al.* at 14.

⁷⁴ Opposition Comments of CTIA at 32-34.

⁷⁵ Comments of Verizon at 19; see also Comments of AT&T at 9-10.

⁷⁶ Comments of AT&T at 10.

⁷⁷ Comments of Public Knowledge *et al.* at 3.

rights of expression – it does *not* regulate the activities of non-governmental entities. Spam filtering therefore does not implicate the First Amendment at all.

“Traffic Blocking” and Other Inapt Analogies. Contrary to CallFire’s suggestion, Commission decisions regarding “traffic blocking” are not analogous to wireless providers’ efforts to protect consumers. As CallFire implicitly acknowledges, those decisions all address “carriers” – *i.e.*, providers of telecommunications services.⁷⁸ Thus, CallFire is begging the relevant question here, assuming that providers of messaging and Short Codes are telecommunications carriers. As CTIA and others have explained at length, messaging offerings are information services, not telecommunications services. CallFire wrongly assumes that which it needs to (but cannot) prove – *i.e.*, that the two are the same. Likewise, the “no blocking” rule applied to broadband Internet access service is premised on the FCC’s decision that that offering is a telecommunications service. Even the Commission has acknowledged that this rule would fail if its reclassification of broadband Internet access service were reversed.⁷⁹

Moreover, CallFire fares no better when it points to license-specific service rules or Commission actions to prohibit the “jamming” of wireless frequencies.⁸⁰ These decisions relate to service rules for a specific spectrum-block or unlawful interference with radio frequency (“RF”) transmissions and simply have no bearing on efforts to combat unwanted and unlawful messaging.

⁷⁸ Comments of CallFire at 9 (citing *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629 ¶¶ 1, 5-6 (WCB 2007) (“Commission precedent provides that no carriers ... may block, choke, reduce or restrict traffic in any way.”)).

⁷⁹ See *Opposition of Respondents to Motion to Stay and Response to Motion for Expedition, United States Telecom Ass’n v. FCC*, Case No. 15-1063, at 6-7 (D.C. Cir. May 22, 2015).

⁸⁰ Comments of CallFire at 10-12.

Direct Interconnection. Public Knowledge *et al.* likewise assume what they must prove, stating without basis that because Title II requires interconnection among providers of telecommunications services, it also should be understood to require direct interconnection among messaging offerings.⁸¹ Simply put, there are no legal grounds for imposing interconnection requirements of any kind on information services. Indeed, even if messaging services were telecommunications services (which they are not), the Act requires only that telecommunications carriers interconnect “directly or indirectly” with other providers – it nowhere mandates direct interconnection.⁸²

V. THERE IS NO BASIS FOR TREATING WIRELESS PROVIDER-OFFERED MESSAGING ANY DIFFERENTLY THAN OVER-THE-TOP MESSAGING OR EMAIL.

Arguments that the Commission should regulate wireless provider messaging as common carriage but not OTT messaging or other functionally identical offerings highlight the arbitrary line-drawing that the Commission would need to engage in to classify messaging as a Title II service. As Verizon explains, in the text-to-911 context, the Commission’s decision to treat OTT services as substitutes for provider-offered messaging services was appropriately guided by consumers’ perception and widespread adoption of OTT services.⁸³ As noted above, consumers send far more messages over OTT services than wireless provider services.⁸⁴ Wireless provider-offered messaging and OTT messaging both rely on storage and retrieval of the message sent, which facilitate “asynchronous” communications that, in many contexts, users prefer over real-

⁸¹ Comments of Public Knowledge *et al.* at 14.

⁸² 47 U.S.C. § 251(a) (emphasis added).

⁸³ Comments of Verizon at 11.

⁸⁴ *See, e.g., id.* at 4-5.

time voice communication.⁸⁵ Likewise, both involve changes to the information sent and received affecting both form and content.⁸⁶

Efforts to distinguish OTT services from provider-offered messaging services underscore why Twilio’s Petition must be rejected, not granted. Public Knowledge *et al.* assert that OTT services “cannot be ‘telecommunications’ . . . because such services change the ‘form and content’ of the communication the user first sent via her ISP by subjecting it to further processing.”⁸⁷ But that is also true of mobile messaging. Public Knowledge *et al.* also assert that OTT services do not offer transmission and thus do not offer telecommunications to users.⁸⁸ Similarly, an information service that contains a transmission component – like mobile messaging – is not a telecommunications service. And Short Codes, of course, do not even have a transmission component.

For similar reasons, there is no basis on which to differentiate wireless provider messaging from email. Email, too, offers asynchronous communications, premised on storage, retrieval, and transformation of information. Indeed, users view messaging as a mobile substitute for email service.⁸⁹ And the 2015 *Open Internet Order* confirms that email is an information service.⁹⁰ The same is true of mobile messaging.

Ultimately, any decision subjecting wireless provider-offered messaging to Title II, but not OTT services or email, would create an arbitrary and capricious regulatory disparity and

⁸⁵ Opposition Comments of CTIA at 30-31; Comments of AT&T at 8; Comments of Verizon at 15-16.

⁸⁶ Opposition Comments of CTIA at 37-39; Comments of Verizon at 16-17.

⁸⁷ Comments of Public Knowledge *et al.* at 16 n.42.

⁸⁸ *Id.* at 16.

⁸⁹ Opposition Comments of CTIA at 9-10.

⁹⁰ *See Open Internet Order*, 30 FCC Rcd at 5763 n.1005.

asymmetry between functionally identical offerings, contrary to the Commission's long-standing policy favoring technological and competitive neutrality. This result would distort competition in this dynamic and increasingly important segment of the market.

VI. CONCLUSION.

For the reasons stated above, the Commission should reject the Twilio Petition and the underlying Public Knowledge petition as well.

Respectfully submitted,

CTIA®

By: /s/ Thomas C. Power

Thomas C. Power
Senior Vice President and General Counsel

Scott K. Bergmann
Vice President, Regulatory Affairs

Brian M. Josef
Assistant Vice President, Regulatory Affairs

CTIA®
1400 16th Street, NW, Suite 600
Washington, DC 20036

December 21, 2015