

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Text-Enabled Toll Free Number)	WC Docket No. 18-28
)	
Toll Free Service Access Codes)	CC Docket No. 95-155

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Declaratory Ruling and Notice of Proposed Rulemaking*¹ on the authorization required to text-enable a toll free number.

Given the increasing importance to businesses, governments, and non-profit organizations of using the text message capabilities of toll free numbers to communicate with customers and the public, INCOMPAS commends the Commission for settling on an “industry-accepted approach”² in its Declaratory Ruling and clarifying that only toll free subscribers may authorize the text-enabling of a toll free number. By requiring messaging providers to obtain a toll free subscriber’s authorization before text-enabling a toll free number, the Commission rightfully elects to give end-users control over this resource and, for the first time, establishes clear guidance for this innovative service.

¹*Text-Enabled Toll Free Numbers, Toll Free Service Access Codes*, WC Docket No. 18-28, CC Docket No. 95-155, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 18-68 (rel. June 12, 2018) (“Declaratory Ruling” or “NPRM”).

² Comments of Zipwhip, Inc. on Notice of Proposed Rulemaking, WC Docket No. 18-28, CC Docket No. 95-155 (filed Aug. 23, 2018), at 5 (“Zipwhip Comments”).

Like others in the record, INCOMPAS is concerned with the current lack of well-established controls in the toll free texting ecosystem.³ In addition to our members that serve the toll-free application needs of enterprise customers, INCOMPAS also has several members that serve as Responsible Organizations (“RespOrgs”) that manage the assignment and routing of toll free numbers. These members and others have repeatedly shared their concerns about the lack of operational processes for the text enablement of toll free numbers⁴ as well as the potential for fraud and abuse in the toll free service space⁵ both in the immediate proceeding as well as in the original Petition for Declaratory Ruling of Somos, Inc., the Toll Free Number Administrator (“TFNA”).⁶ In addition to the well documented potential for fraud through number spoofing and the text-enabling of a toll free number without a subscriber’s consent, INCOMPAS members have highlighted the potential for abuse where one provider, Zipwhip, Inc., aggregates and manages a majority of the wireless toll free texting traffic to and from subscribers. In addition to potential “traffic routing failures,” Bandwidth notes in its comments that this gives Zipwhip

³ See Comments of Bandwidth Inc., WC Docket No. 18-28, CC Docket No. 95-155 (filed Aug. 23, 2018), at 2 (expressing concern over the “fundamental lack of effective controls over how toll-free numbers are used for messaging services”) (“Bandwidth Comments”); Comments of the Ad Hoc Telecom Users Committee, WC Docket No. 18-28, CC Docket No. 95-155 (filed Aug. 23, 2018), at 3-6 (indicating surprise over the ability of text messaging providers to “text enable a toll free number . . . without using the RespOrg system”).

⁴ See Reply Comments of West Telecom, LLC in Support of Somos, Inc. Petition, CC Docket No. 95-155 (filed Dec. 20, 2016), at 1-6.

⁵ See Comments of Twilio Inc., WC Docket No. 18-28, CC Docket No. 95-155 (filed Aug. 23, 2018), at 2-3; Comments of Somos, Inc. on Notice of Proposed Rulemaking, WC Docket No. 18-28, CC Docket No. 95-155 (filed Aug. 23, 2018), at 10 (predicting that the incidence of fraud and abuse will accelerate as texting to toll free numbers becomes more common).

⁶ Petition of Somos, Inc. for Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, CC Docket No. 95-155 (filed Oct. 28, 2016).

“unfettered access to and use of extremely sensitive confidential and competitive information in an environment that is entirely free of regulatory oversight.”⁷

Rather than rely on the status quo as some argue in the opening comments,⁸ INCOMPAS recommends that the Commission adopt its proposal to require the party text enabling the toll free number (such as messaging providers) to inform its RespOrg once the subscriber has provided authorization to text-enable a toll free number and for the RespOrg to then update the Service Management System Toll-Free Number Registry (“SMS Database”). The Commission’s proposal in this proceeding represents an efficient solution—a database for toll free numbers already exists and can be easily modified to accommodate this new feature. Because the TFNA already manages a database for toll free voice applications, it is reasonable to believe that data fields can be quickly and easily added to the Registry that would allow RespOrgs to indicate a subscriber’s decision to text enable a toll free number without adding significant operational costs. Therefore, INCOMPAS agrees with commenters that encourage the Commission to ensure that any “exclusive registry is efficiently operated on a cost-basis rather than a for-profit basis.”⁹

Furthermore, the Commission’s proposal is justified since RespOrgs already have procedures in place to protect against bad actors and to ensure that toll free resources are not

⁷ Bandwidth Comments at 4.

⁸ See ZipWhip Comments at 12; Comments of AT&T, WC Docket No. 18-28, CC Docket No. 95-155 (filed Aug. 23, 2018), at 5.

⁹ See Comments of CenturyLink, WC Docket No. 18-28, CC Docket No. 95-155 (filed Aug. 23, 2018), at 3. INCOMPAS agrees with CenturyLink that the Commission should clarify in any final ruling that a toll-free texting registry should be operated on a cost-recovery basis, rather than on a for-profit basis. While INCOMPAS believes that, as TFNA, Somos is well-positioned to manage a toll-free texting registry, the proposed change to the SMS Registry ought to be relatively minor and should be treated accordingly with respect to any additional costs that RespOrgs may be charged as a result of this update.

misused. In fact, the requirement to inform a subscriber's RespOrg of the text enablement of a toll free number would ensure a level playing field between the different companies engaged in this robust and innovative market and could prevent the abuse that RespOrgs have complained of in the proceeding.

Finally, INCOMPAS contends that it is not necessary for the Commission to make a wholesale determination on the classification of SMS texting, as suggested by some in the record, before taking action in this proceeding.¹⁰ As noted in the NPRM, the Commission has plenary authority under section 251(e)¹¹ "to set policy with respect to all facets of numbering administration in the United States."¹² Given that the Commission exercises jurisdiction over RespOrgs and the TFNA, the Commission clearly has authority to address the changes considered in the NPRM since it will be these entities that are responsible for updating and managing the toll free text registry.

For the reasons stated herein, INCOMPAS urges the Commission to adopt the recommendations in its reply comment, as it considers the issues raised in the NPRM.

Respectfully submitted,
INCOMPAS
/s/ Christopher L. Shipley
Christopher L. Shipley
INCOMPAS
2025 M Street, NW
Suite 800
Washington, D.C. 20036
(202) 872-5746

September 7, 2018

¹⁰ Zipwhip Comments at 23.

¹¹ 47 U.S.C. § 251(e).

¹² NPRM at ¶ 26.