



Federal Trade Commission Hearings on Competition and Consumer Protection in the 21st Century Project Number P181201

Topic 2 Comments by Twilio

About Twilio

More than two million developers around the world have used Twilio to unlock the magic of communications to improve any human experience. Twilio has democratized communications channels like voice, text, chat, and video by virtualizing the world’s telecommunications infrastructure through application programming interfaces (APIs) that are simple enough for any developer to use, yet robust enough to power the world’s most demanding applications. By making communications a part of every software developer’s toolkit, Twilio is enabling innovators across every industry — from emerging leaders to the world’s largest organizations — to reinvent how companies engage with their customers. *Note: The comments below reflect Twilio’s initial input on Topic 2. Twilio’s full initial comments have been submitted under Topic 1.*

Topic 2: Competition and consumer protection issues in communication, information and media technology networks

The 1995 Pitofsky hearings and the 2007 policy workshops and subsequent *Broadband Connectivity Competition Policy Staff Report* are both promising precedents for the Commission’s ability to convene stakeholders across industry roles to better understand and disseminate information regarding innovation trends and their impact to competition and consumers. Both efforts also demonstrate the role the Commission can play in educating stakeholders and influencing policy in the rapidly evolving communications landscape.¹

In the spirit of the Commission’s historical efforts to study network effects of competition, Twilio urges the Commission to take a fresh look at the the emerging ways consumers access communications, information and media technology.² Today, that engagement increasingly takes place through mobile devices.

¹ The FTC Broadband Connectivity Competition Policy Staff Report, June 2007 specifically sought to “understand and anticipate how “the Internet has profoundly impacted numerous aspects of daily life for many people in the United States and is increasingly vital to the American economy.” <https://www.ftc.gov/sites/default/files/documents/reports/broadband-connectivity-competition-policy/v070000report.pdf>.

² As a disruptive, new entrant to the communications space, Twilio’s perspective as a CPaaS provider may be of particular interest to the FTC, as Twilio can help the FTC think through issues of protecting innovation that are core to the FTC’s mission. See, e.g., D. Bruce Hoffman, Acting Director, Bureau of Competition, FTC, Competition Policy and the Tech Industry – What’s at stake? (Apr. 12, 2018), available at https://www.ftc.gov/system/files/documents/public_statements/1375444/ccia_speech_final_april30.pdf (“Don’t let incumbent industry participants ... block innovation and deter the advancement of new



According to the December 2017 Center for Disease Control's National Health Interview Survey, 53% of Americans no longer have landlines and live in wireless-only households.³ Pew Research Center reports finding that in 2018, 20% of U.S. adults do not use broadband at home, but instead rely on smartphones, up from only 8% of U.S. adults in 2013.⁴

In the face of this widespread adoption of mobile communications by Americans, text messaging has become an essential, trusted, and strongly preferred form of communication among consumers and businesses alike. Indeed, 71% of American consumers send or receive an SMS message at least once a day.⁵

Twilio's customers use Twilio's platform to send and receive text messages that are critical to their users. For example, Zillow lets real estate agents know when a home buyer has a question. Millions of parents, teachers and students communicate about homework and school scheduling using Remind. CareMessage provides health care reminders to low-income patients who may not have smartphone access.⁶ NexGen Global Technologies provides public safety updates to campuses.

In each of these examples, the recipient has opted in and expects to receive important communications using text messages. Yet, wireless carriers have blocked millions of text messages from these companies without permission, without notification to their wireless subscribers, and despite the fact that these messages are compliant with the Telephone Consumer Protection Act (TCPA). Twilio reports that carriers blocked 75 million wanted, lawful, TCPA-compliant text messages in 2017 alone. In the wake of the December 2017 FCC Restoring Internet Freedom order, blocking and filtering of wanted communication by wireless carriers is increasing. Twilio estimates that wireless carriers will block more than 175 million text messages in 2018.

Wireless carriers can block or throttle the senders of text messages with impunity because of the characteristics of the communications marketplace. Critically, the competitive feedback loop between

technology"); Stephen Weissman, Deputy Director, Bureau of Competition, FTC, Pardon the Interruption: Competition and Disruptive Business Models (Nov. 4, 2015), available at https://www.ftc.gov/system/files/documents/public_statements/863443/151105disruptivebusinessspeech.pdf ("We are especially attentive to collective actions by incumbents aimed at excluding new competitors ... or raising their costs of entry.").

³ <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201806.pdf>

⁴ <http://www.pewinternet.org/fact-sheet/internet-broadband/>

⁵ <https://api.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf>

⁶ Text message blocking further heightens the digital divide, posing a particularly isolating impact to the 20% of U.S. adults who do not have access to smartphones. CTIA Wireless Snapshot, 2017 would further indicate that 36% people making less than less than \$30,000 a year do not own smartphones.

<https://api.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf>



subscriber and carrier is broken because subscribers generally do not know that their wireless carrier blocks text messages that they expect to receive. Instead, the wireless carrier blocks without transparency, and does not seek permission from or even notify the subscriber, meaning the subscriber has no reason to switch carriers to avoid the blocking behavior.⁷ Further, the blocking practice is arguably in conflict with so-called “unlimited text” plans offered by wireless carriers insofar as the subscriber does not receive all text communications they expect to receive, and further, this limiting of delivery is done without the subscriber’s notification or consent.

Taking advantage of the broken competitive feedback loop, wireless carriers use blocking and throttling to force organizations and companies whose text messages they are blocking to move their traffic to inflexible, less innovative, and costlier channels; and those costlier channels yield higher revenue for the wireless carriers. For example, short codes, which are administered through the CTIA - Wireless Association, cost hundreds of times more than a standard ten-digit phone number to lease, and include significant additional per message fees to carriers.⁸ In addition to their significant cost, short codes are not voice-enabled, are less recognized by consumers and some wireless subscriber plans do not support them. While blocking the traffic of non-traditional communications platforms like Twilio, wireless carriers offer their own competing enterprise messaging services that use standard ten-digit phone numbers.⁹

American consumers need a “cop on the beat” to ensure that conduct by wireless carriers, or any other industry player, does not block innovation, deter the advancement of new technology, deceive consumers, or otherwise harm competition. This is just as true for text messaging applications that leverage broadband as broadband services themselves.

To that end, Twilio urges the FTC to ensure the policing of competition and consumer protection issues in text messaging does not fall through the cracks between FCC and FTC, and encourages the inclusion of text message blocking in the hearings related to Topic 2, “Competition and consumer protection issues in communication, information, and media technology networks.”

⁷ The FCC has recognized the unique market power that wireless carriers enjoy over their subscribers in the context of calls: “The Commission has previously noted the unique difficulties presented by the case of terminating access, where the called party is the one that chooses the access provider, but it neither pays for terminating access service, nor does it pay for, or choose to place, the call. ... In these circumstances, providers of terminating access may be particularly insulated from the effects of competition in the market for access services.” Access Charge Reform, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9923, 9935-6 (2001), para 28.

⁸ For short code pricing see: <https://usshortcodes.com/pricing>

⁹ Examples of enterprise messaging services include: <http://www.verizonenterprise.com/products/mobility/workforce-productivity/business-messaging/>, <https://www.business.att.com/solutions/Service/mobility-services/mobile-messaging/global-smart-messaging-suite/>, <https://business.sprint.com/solutions/enterprise-messaging-gateway/>