PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for ''Reasonably Available Control Technology under 2008 8-hour ozone National Ambient Air Quality Standard'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	*	*	*	*
Reasonably Available Control Technology under 2008 8-hour ozone National Ambient Air Quality Standard.	Statewide	08/18/2016	02/20/2019 [Insert **Federal Register** citation].	

[FR Doc. 2019–01881 Filed 2–19–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 08–7; FCC 18–178]

Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling; denial of petitions.

SUMMARY: In this Declaratory Ruling, the Commission finds that two forms of wireless messaging—Short Message Service (SMS) and Multimedia Messaging Service (MMS)—are information services, not telecommunications services under the Communications Act (the Act), and that they are not commercial mobile services nor their functional equivalent. In so doing, the Commission denies petitions filed by Twilio and Public Knowledge asking that the Commission subject text messaging services to common carrier regulation under Title II of the Act. This document concludes that classifying SMS and MMS wireless messaging services as information services will enable wireless providers to continue their efforts to protect American consumers from unwanted text messages and is therefore in the public interest.

DATES: The Declaratory Ruling was released and became effective on December 13, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth McIntyre, Deputy Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, (202) 418–0668, email *elizabeth.mcintyre@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling, WT Docket No. 08–7; FCC 18–178, adopted December 12, 2018 and released December 13, 2018. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Copies of the Declaratory Ruling and Order also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number 08–7. Additionally, the complete item is available on the Federal Communications Commission's website at *http://www.fcc.gov.*

I. Discussion

A. SMS and MMS Wireless Messaging Services Are Information Services

1. The Communications Act defines an ''information service'' as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications. SMS and MMS wireless messaging services meet this definition. First, SMS and MMS wireless messaging services provide the capability for ''storing'' and ''retrieving'' information. When a user sends a message, the message is routed through servers on mobile networks. When a recipient device is unavailable to receive the message because it is turned off, the message will be stored at a messaging center in the provider's network until the recipient device is able to receive it. The messaging center will then forward the message to the recipient device when it becomes available. After the network delivers the message, the message is then stored on the user's device and will remain stored there until the user deletes it. This storage and retrieval capability is analogous to email service, which has been recognized under Commission precedent as an information service and similarly involves storage and retrieval functionality. Both email and SMS and MMS messaging services support asynchronous transfer of information allowing users to send messages without the need for the recipient of the message to be available to receive it.

2. The storage and retrieval functionality of SMS and MMS wireless messaging is an essential component of the services. It allows users to retrieve messages at any time and to interact with the stored information. The storage and retrieval functionality of SMS and MMS wireless messaging services also support users' expectation that the wireless messages they send will be delivered to their intended recipients even if the recipients' devices are turned off or are otherwise unavailable.

3. SMS and MMS wireless messaging services also involve the capability for ''acquiring'' and ''utilizing'' information. MMS also allows users to interact with data by watching and replaying videos and opening attachments. The Commission has found that services that provide this ability for subscribers to utilize and interact with stored information, even information provided by third parties, are information services.

4. In addition, SMS and MMS wireless messaging services involve ''transforming'' and ''processing'' capabilities. Messaging providers, for example, may change the form of transmitted information by breaking it into smaller segments before delivery to the recipient in order to conform to the character limits of SMS. They can also reformat multimedia messages before delivery to resolve the differences in the media processing capabilities of the sending and receiving devices. Commonly, wireless providers may compress or reduce the quality or size of photos and videos to optimize the viewing of a message on a particular receiving device. The Commission

agrees with commenters that without these capabilities, some messages could not be delivered to their recipients. Messages that are exchanged between email and messaging platforms may also be reformatted to ensure compatibility with each platform. In the case of an email sent as a text message, for instance, information such as an email's subject line is stripped out of the message and ''time, date, status reports, and call-back numbers'' are added to the message. Other texting services similarly involve information processing functionalities, such as the ability to program the service to generate automatic replies upon receipt of incoming messages.

5. In sum, SMS and MMS wireless messaging services offer the capability for ''storing'' and ''retrieving'' information, for ''acquiring'' and ''utilizing'' information, and for ''transforming'' and ''processing'' information. Accordingly, the services fit squarely within the statutory definition of an ''information service.''

6. The Commission has previously concluded that the question of whether an information service is ''offered'' should be evaluated with respect to the integrated finished product. Under this test, an integrated information service may include a transmission component inextricably intertwined with information processing capabilities. The Commission has historically looked at two factors to make this determination—consumer perception and the actual characteristics of the service. Consistent with this framework, the Commission examines whether wireless providers' SMS and MMS service offerings make available information processing capabilities inextricably intertwined with transmission. To make this determination, the Commission considers both how consumers perceive SMS and MMS wireless messaging services as well as how the services are provided as a factual matter. The Commission's analysis shows that both factors support the conclusion that SMS and MMS wireless messaging services inextricably intertwine the information processing capabilities described above with transmission.

7. The Commission begins by examining what consumers perceive to be the ''integrated finished product'' when they purchase wireless messaging service. Consumers perceive the offer of wireless messaging service to include more than mere transmission. They expect their wireless messaging service to enable the information processing functionalities that allow wireless messages to be stored and retrieved, and to allow users to send different types of media among different devices and messaging platforms. Indeed, evidence shows that consumers often prefer SMS and MMS wireless messaging services precisely because of these functionalities. For example, consumers view SMS and MMS messaging services as less disruptive and intrusive than voice calls because the storage and retrieval functionality of the services allows messages to be sent without anyone being there to receive them.

8. Turning next to how the service actually is provided, the Commission finds that, as a factual matter, SMS and MMS wireless messaging services are offered as a single, integrated information service. Although these services involve the transmission of information, the information processing functionalities associated with the services must be combined with transmission for the services to work. With SMS and MMS texting, the transmission of wireless messages is ''always and necessarily'' combined with data processing functionalities that enable storage and retrieval of messages and/or the transformation of information. In fact, SMS and MMS wireless messaging services are only offered along with these information processing capabilities. The information processing capabilities of messaging combined with transmission enable the asynchronous transfer of information and ensure that wireless messages can be exchanged and accessed across different platforms and devices.

9. Twilio contends that the information processing capabilities of wireless messaging service should be viewed as ''add-on'' or ''adjunct to basic'' services that are insufficient to make wireless messaging service an information service. Twilio's use of the term ''adjunct'' refers to pre-1996 Telecommunications Act precedent under which the Commission held that some capabilities ''may properly be associated with basic [common carrier] service without changing its nature.'' The 1996 Telecommunications Act does not use the term ''adjunct-to-basic,'' but rather includes a ''telecommunications management'' exception to the definition of information services, excluding from the definition those capabilities ''for the management, control, or operation of a telecommunication system or the management of a telecommunications service.'' The Commission has found that the telecommunications management exception is properly understood as ''directed at internal operations, not at services for customers or end users.'' The Commission finds that the information processing functionalities of SMS and MMS wireless messaging services are intended to benefit consumers and are not merely directed at internal operations. Consumers view the data processing functionalities that enable storage and transformation of information as essential elements of SMS and MMS wireless messaging services. The record shows that consumers often prefer texting to calling because of these features. The Commission has clarified that the scope of services viewed as falling within the telecommunications management exception to the information service definition is ''narrow'' and should focus only on those services that ''facilitat[e] bare transmission.'' The Commission has explained that, even where functionalities were useful in some way to providers in managing their networks, where those functionalities were designed primarily to be essential for end users, they would not fall within the telecommunications systems management exception. The Commission finds that even if the information processing functionalities of SMS and MMS wireless messaging services help wireless providers route wireless messages through their networks, those functionalities are nonetheless essential to end users and their ability to use wireless messaging services. Thus, consistent with Commission precedent, the Commission rejects the argument that those functionalities fall within the telecommunications management exception to the definition of information service.

10. Twilio also asserts that the Commission must find wireless messaging service to be a telecommunications service because ''the only offering that wireless carriers make to the public, with respect to messaging, is the ability of consumers to send and receive messages of the consumers' design and choosing.'' Public Knowledge *et al.* argue that wireless messaging service is different from other services the Commission has classified as information services because it does ''not rely on the internet and simply relay[s] the user's communications from one place to another, without change in the form or content of the communication.'' They also claim that wireless messaging service is intertwined with mobile voice service, and thus the two services should be regulated in the same manner. They note, for example, that ''most phones will recognize a phone number inside of a text message, and will allow

the owner to easily call that number or add it to his or her address book.'' These arguments are unpersuasive.

11. The definition of an information service is not limited to services that rely on the internet. Rather, what matters are the capabilities offered by the service, wireless messaging services feature storage, retrieval, and other information-processing capabilities. SMS and MMS wireless messaging services do much more than merely transmit ''information of the user's choosing, without change in the form or content of the information.'' Twilio points to providers' marketing materials to support its argument that what wireless providers are offering to consumers is only the ability to send and receive messages of their design and choosing, but those materials also discuss the information processing capabilities associated with wireless messaging service. While the specific description of texting services may differ from provider to provider, these examples provide evidence that information-processing capabilities are an integral part of the SMS and MMS wireless messaging services that wireless providers offer to consumers.

12. Moreover, the fact that SMS and MMS wireless messaging services are typically bundled with mobile voice services does not overcome the Commission's findings regarding the information service capabilities that these services provide and does not justify their classification as telecommunications services. For example, the fact that fixed broadband internet access service is often bundled with wireline voice service does not render fixed broadband internet access service a telecommunications service.

13. The Commission also rejects Twilio's argument that it must classify wireless messaging services as telecommunications services because the Commission has already ''held that a text message is a call under a portion of Title II'' (*i.e.,* under Section 227 of the Act). The Commission finds no inconsistency between its decision here and its actions in the Telephone Consumer Protection Act (TCPA) context, and reject Twilio's claim that its decision finding that the TCPA's prohibition on placing calls to wireless numbers applies to text as well as voice calls implicitly addressed the regulatory classification of wireless messaging services and requires that they be treated as telecommunications services. To the contrary, the Commission's decision merely clarified the meaning of the undefined term ''call'' in order to address the obligations that apply to telemarketers and other callers under the TCPA. That decision neither prohibits the Commission from finding that wireless messaging service is an information service, nor compels the Commission to conclude that messaging is a telecommunications service. Twilio's argument amounts to an assertion that if any provision in Title II of the Act applies to a service, then that service must be a telecommunications service. But a look at Title II easily belies that claim. For instance, although it is titled ''Common Carriers,'' Title II applies not only to common carriers or telecommunications carriers, but also to other entities such as electric utilities and equipment manufacturers. Section 224, for example, imposes requirements on electric utilities with respect to pole attachments. Section 255 requires telecommunications equipment manufacturers to provide equipment accessible for persons with disabilities. The TCPA provision itself generally prohibits the use of a facsimile machine to send unsolicited advertisements, but that does not constitute a determination that an individual's sending of a fax is a telecommunications service, just as the application to an individual's making ''text calls'' does not reflect a determination that wireless messaging is a telecommunications service. In any event, for purposes of regulatory treatment, there is a significant difference between being subject to Commission regulation and being subject to *per se* common carrier regulation. Only the latter requires classification as a telecommunications service. The Commission clarifies herein that SMS and MMS wireless messaging are Title I services, and thus, will not be subject to *per se* common carrier regulation.

14. Having determined that wireless messaging service is an information service, the Commission rejects requests that it use ancillary authority to apply common carrier regulation. As discussed below, application of the non-discrimination provisions of Section 202 of the Act or similar non-discrimination mandates under Title I would be contrary to the public interest.

B. SMS and MMS Wireless Messaging Services Are Not Commercial Mobile Services

15. The Commission finds that SMS and MMS wireless messaging services do not constitute ''interconnected services.'' Therefore, they do not meet the statutory definition of commercial mobile services, and need not be classified as telecommunications services on that basis. In particular, wireless messaging services do not ''give subscribers the capability to communicate to or receive communications from *all other users* on the public switched network.'' Instead, users of SMS and MMS wireless messaging services may only send wireless messages from devices able to message other platforms and to other users with wireless messaging-enabled devices. This leaves out a significant number of consumers who continue to use fixed line telephones that generally are not wireless messaging-enabled. The Commission's most recent data indicate, for instance, that there were 58 million fixed telephone lines in service as of December 2016. The Commission agrees with commenters that because SMS and MMS wireless messaging services do not provide the ability to reach all of these landline subscribers, they do not meet the definition of interconnected services.

16. Twilio argues that wireless messaging services nevertheless meet the definition of interconnected services because users have the capability to reach landline phones through the use of apps that allow landline phones to be text-enabled. The Commission finds this argument to be unavailing. First, Twilio's argument rests on the capabilities of a separate application or service that provides text to landline functionality. As the Commission has found previously, however, the definition of ''interconnected service'' focuses on the nature of the offered mobile service itself. The Commission agrees with commenters that the fact that users may be able to text landline numbers through the use of a separate application or service does not make SMS and MMS wireless messaging services themselves interconnected services. Moreover, even if text-to-landline service were not viewed as a separate service, text-to-landline service does not appear to be supported by all providers, and as a result, not all landline phones are able to send or receive SMS and MMS text messages. In addition, even in cases where text-to-landline service is available, the message sent to a landline number is typically sent as a digitized voice recording, and particularly for MMS messages, does not include any pictures or other media components that are regularly included in messages sent to other mobile devices.

17. That wireless subscribers are capable of receiving text messages from all other users on the public switched network that possess devices capable of transmitting text messages does not change the Commission's analysis. MetroPCS, for example, argues that ''[i]t is irrelevant whether landline phones

are capable of receiving SMS messages from wireless units since the 'or' in the definition of 'interconnected service' is met as soon as wireless devices have demonstrated capability to receive such messages from landline phones.'' This argument is unpersuasive, because regardless of the use of the word ''or,'' wireless messaging service does not provide users with the ability to receive communications from all users of landline phones. While there are, as described above, some services that provide text-to-landline functionality by translating wireless messages to voicemail, these services do not appear to be available from all providers and, where these services are not available, wireless messaging users are not able to receive wireless messages from landline phones. Furthermore, to the extent that landline phones are capable of sending and receiving wireless messages, the technologies that allow such communications transform wireless messages into a different communications medium and exhibit the characteristics of information services.

18. The Commission also disagrees with Twilio's claim that the Commission has already ruled that wireless messaging service is interconnected with the public switched network. In 2007, the Commission applied automatic roaming obligations to push-to-talk and SMS services based on its determination that doing so would serve the public interest because ''consumers expect the same seamless connectivity with respect to these features and capabilities as they travel outside their home network service areas.'' While the Commission noted that some SMS services were provided on an interconnected basis, the Commission did not address the question of whether SMS services were interconnected for purposes of addressing the regulatory classification of such services. To the contrary, the Commission specifically declined to address that issue, stating that ''nothing in this order should be construed as addressing regulatory classifications of push-to-talk, SMS or other data features/services.'' Accordingly, the Commission's detailed analysis and conclusion here that messaging does not meet the regulatory definition of ''interconnected service'' under the Commission's rules does not conflict with the Commission's 2007 *Roaming Report and Order.*

19. Further, the Commission finds that SMS and MMS wireless messaging services are not the functional equivalent of commercial mobile services. A mobile service that does not meet the definition of commercial mobile service is presumed to be a private mobile radio service unless the service is determined to be the functional equivalent of commercial mobile service. A variety of factors are evaluated to determine whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: Consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

20. The Commission sees no evidence that SMS and MMS wireless messaging services are closely substitutable with commercial mobile radio services, whether from a technical or practical point of view. Nor has the Commission seen any evidence that a change in the price of SMS and MMS wireless messaging service will cause a change in the price of commercial mobile radio service. The record does not indicate that customers would switch from wireless messaging service to a comparable commercial mobile service due to changes in price or service terms. Moreover, the fact that several providers bundle messaging with voice, on its own, is insufficient to enable the Commission to conduct a demand substitution test to overcome the presumption that wireless messaging is not a commercial mobile service but rather a private mobile service.

21. The technical characteristics and consumer use of wireless messaging service are also distinct from commercial mobile service. Wireless messaging service enables users to exchange messages containing text and multimedia content for viewing immediately or at a later time and conduct internet searches. Though recipients of SMS and MMS messaging may respond immediately, they are not required to be present at the time the message is sent. In contrast, a commercial mobile service call requires the caller and recipient to be available at the same time for the phone conversation.

22. Marketing materials highlight the distinctions between these two services, suggesting under the last prong of the functional equivalence test that wireless providers target separate markets for commercial mobile service and SMS/MMS. For example, in promoting its business messaging service, AT&T states that consumers ''can find calls intrusive.'' And as a business wireless messaging firm notes, compared to voice service, wireless messaging is ''a more reliable way of communication because it may be stored and read at any moment later, it's clear and cannot be misunderstood,'' but that voice is important in a variety of situations and ''never drops off the market.'' This market information, in addition to the fact that wireless messaging is typically bundled with voice as a complementary service, indicates that firms recognize that consumers highly value the unique characteristics of each service and do not consider these services as substitutes for each other. Accordingly, under the functional equivalence standard, the Commission finds that wireless messaging today is not the functional equivalent of commercial mobile service.

23. Lastly, the Commission's conclusion that SMS and MMS wireless messaging services meet the definition of information service also compels it to conclude that they are not commercial mobile services. Consistent with the Commission's previous findings in the context of mobile broadband internet access service, classifying messaging as a commercial mobile service under Section 332 and also as an information service under Section 3 of the Act could lead to ''contradictory and absurd results.'' Such an interpretation would create an internal contradiction in the statutory framework because Section 332 would require that a service provider be treated as a common carrier with respect to its provision of wireless messaging service, while Section 3 would prohibit the application of common carrier regulation to the wireless messaging service provider. Construing the commercial mobile service definition to exclude SMS and MMS wireless messaging services avoids this contradiction and is consistent with the Act's overall intent to allow information services to develop free from common carrier regulations.

C. Classifying SMS and MMS Wireless Messaging Services as Information Services Is in the Public Interest

24. The Commission's classification of SMS and MMS wireless messaging services as information services is not only fully consistent with the Communications Act, it is also independently supported by public policy considerations. As discussed below, such a classification will empower wireless providers to continue their efforts to protect consumers from unwanted text messages. By contrast, classifying SMS and MMS as Title II

telecommunications services would harm those efforts and open the floodgates to unwanted messages—drowning consumers in spam at precisely the moment when their tolerance for such messages is at an all-time low.

25. In the absence of a Commission assertion of Title II regulation, wireless providers have employed effective methods to protect consumers from unwanted messages and thereby make wireless messaging a trusted and reliable form of communication for millions of Americans. The Commission rejects the request of Twilio to upend this status quo by classifying SMS and MMS as telecommunications services subject to common carriage obligations under Title II. Applying such regulation, or only non-discrimination obligations, to SMS and MMS, either directly or through an exercise of ancillary jurisdiction, would inhibit wireless providers' ability to continue protecting consumers from unwanted messages. In particular, in the context of voice service, under Title II, the Commission has generally found call blocking by providers to be unlawful, and typically permits it only in specific, well-defined circumstances. The record shows that, as a result, wireless providers would be limited in their efforts to prevent spam and unwanted messages from reaching end users under Title II regulation, and consequently, consumers would be bombarded with unwanted text messages.

26. The record also demonstrates that applying Title II regulation and thereby curbing wireless providers' ability to use anti-spam and other protections would open SMS and MMS to more spam attacks. Indeed, continuing to empower wireless providers to protect consumers from spam and other unwanted messages is imperative in light of the fact that the growth and popularity of SMS and MMS wireless messaging services have made them an attractive target for bad actors and spammers. For example, according to Fact Atlas, SMS spam volumes have grown in proportion with overall SMS traffic volumes. Symantec also explains that ''[a]s more users rely on their mobile devices, more spam, scams, and threats are tailored to these devices,'' and ''SMS and other mobile messaging technologies are readily being used as a means to deliver all kinds of scam campaigns, such as adult content, rogue pharmacy, phishing and banking scams, payday loan spam, fake gifts.'' Additionally, two dozen state attorneys general have expressed concerns about the threat that scams via text messaging pose to consumers or provided state residents with tips on how best to avoid such scams.

27. For these reasons, state attorneys general and other commenters argue that the Commission should not allow wireless messaging services to become plagued by unwanted messages in the same way that voice service is flooded with unwanted robocalls. The Commission agrees. Last year, Americans received approximately 30 billion robocalls, and for the first five months of 2018, more than 16 billion robocalls have already been placed. And the Commission receives over 200,000 complaints about unwanted calls each year—around 60% of all of the complaints that the Commission receives from consumers. The Commission's classification of SMS and MMS as information services will enable wireless providers to continue taking steps to ensure that wireless messaging remains relatively spam-free, and therefore a trusted form of communication for millions of Americans, while a contrary classification would open messaging to many of the same scams and nuisances that plague consumers of voice services today.

28. At the same time, the Commission finds no reason to believe that consumers will not receive the messages they do want as a result of this Declaratory Ruling. First, wireless providers have every incentive to ensure the delivery of messages that consumers want to receive in order to guarantee the integrity of this essential service and to retain consumer loyalty. Consumers have a wealth of options for wireless messaging service; if wireless providers do not ensure that messages consumers want are delivered, they risk losing those customers to other wireless providers or to over-the-top applications. In the occasional event that such measures have been found to block messages that may be wanted, wireless providers have responded quickly.

29. Some commenters assert that under Title I, providers of SMS and MMS wireless messaging services might act anticompetitively, blocking messages in order to protect their services against competitors. But this concern is not borne out in the marketplace; the Commission has not imposed Title II or other non-discrimination obligations, and yet under current industry practices, competing services are thriving. In cases in which wireless providers are alleged to be perpetrating unfair or deceptive acts or practices, the U.S. Federal Trade Commission has broad authority to police such conduct and protect consumers. Similarly, if wireless providers act in an anticompetitive manner, their actions can be challenged under the general antitrust laws.

30. Commenters make a number of other policy arguments for classifying wireless messaging as a Title II service, none of which the Commission finds persuasive. The Commission finds such classification unnecessary to protect individuals with disabilities, enforce the First Amendment, protect public safety and health, or foster innovation.

31. Beyond empowering wireless providers to continue protecting consumers from unwanted text messages, the Commission's classification decision today promotes innovation and investment by removing the regulatory uncertainty caused by the threat of Title II classification of SMS and MMS wireless messaging services. The Commission has recognized that ''regulatory burdens and uncertainty, such as those inherent in Title II, can deter investment by regulated entities.'' Even the threat of Title II regulation can have significant deleterious effects on investment. In contrast, regulatory certainty and a ''minimal regulatory environment . . . promote[ ] investment and innovation in a competitive market.'' The Commission's classification decision today not only avoids the potential pitfalls of a Title II regime, it is also a recognition that utility-style regulation is not suitable for dynamic technological industries, such as SMS and MMS wireless messaging services, that constantly undergo major developments, because such regulation inherently restricts the activities in which the regulated industry can engage. As the Commission recognized in the *Vonage Order,* innovative services flourish when they are ''subject to the Commission's long-standing national policy of nonregulation of information services.''

32. Additionally, the Commission notes that its finding that SMS and MMS wireless messaging services are information services does not affect the general applicability of the spectrum allocation and licensing provisions of Title III and the Commission's rules to this service. These provisions and rules continue to apply because the service is using radio spectrum. Title III empowers the Commission to prescribe the nature of the service to be rendered and to make such rules and regulations and prescribe such restrictions and conditions as may be necessary to carry out the provisions of the Act. Application of provisions governing access to and use of spectrum (and their corresponding Commission rules) is not affected by whether the service using

the spectrum is classified as a telecommunications or information service under the Act. Further, nothing in this Declaratory Ruling should be construed as modifying any spectrum use authorizations and service rule obligations arising out of license conditions or rules governing unlicensed use of the spectrum.

33. Finally, the Commission notes that nothing in this Declaratory Ruling impacts the Commission's ability to maintain and update its text-to-911 rules. The Commission has previously found that Sections 301, 303, 307, 309 and 316 support its authority in this context, and they continue to do so. The Commission has also relied on the Twenty-First Century Communications and Video Accessibility Act (CVAA) to provide authority in this area, as well as its authority to protect the safety of life and property by safeguarding the public's ability to access 911 services. More recently, Congress specifically directed the Commission to consider improvements to 911 across multiple technological platforms when it enacted Kari's Law Act of 2017 and Section 506 of RAY BAUM'S Act. Similarly, the Commission's authority regarding wireless emergency alerts (WEAs) remains unchanged by this Declaratory Ruling.

II. Ordering Clauses

34. Accordingly, *it is ordered*, that pursuant to sections 1–4, and 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, and 303, and section 1.2 of the Commission's rules, 47 CFR 1.2, the Declaratory Ruling *is adopted.*

35. *It is further ordered*, pursuant to sections 1–4, and 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, and 303, and section 1.2 of the Commission's rules, that the Petition for Declaratory Ruling filed by Public Knowledge et al. in WT Docket No. 08–7 on December 11, 2007, *is denied.*

36. *It is further ordered*, pursuant to sections 1–4, and 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, and 303, and section 1.2 of the Commission's rules, that the Petition for Expedited Declaratory Ruling filed by Twilio Inc. in WT Docket No. 08–7 on August 26, 2015, *is denied.*

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–02762 Filed 2–19–19; 8:45 am]

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