Comments of Twilio to the Inception Impact Assessment on developing requirements for Artificial Intelligence

Twilio thanks the European Commission for the opportunity to respond to the Inception Impact Assessment on developing requirements for Artificial Intelligence. Twilio has already submitted a response to the European Commission's *White Paper on Artificial Intelligence – A European Approach* where the company highlighted its support for this important discussion and Twilio's willingness to contribute constructively.

Twilio and the use of AI

Twilio is a leading global cloud communications services provider. Twilio's products and services allow organizations to embed communications capabilities into their web, desktop, and mobile applications, enabling them to communicate more efficiently and effectively and reinvent how they engage with their customers. Organizations have used Twilio to allow users to contact their teacher or students, alert the public about an emergency, video chat with their doctor, speak to their rideshare driver, make a bank transaction, shop online, authenticate an account, and interact with elected officials, among many other activities.

As a business to business (B2B) company, Twilio currently handles more than 800 billion interactions every year for more than 200,000 organizations globally – from the world's largest enterprises to small- and medium-sized businesses (SMEs), which constitute the vast majority of Twilio's customers – and across a broad range of industries including education, financial services, healthcare, logistics, non-profit, and government services. Twilio is paid by organizations for the services it provides and does not monetize consumer data.

Twilio leverages artificial intelligence (AI) because it supports the company's mission of enhancing communications. Twilio uses AI and high-quality data training sets to create products that help companies build better relationships with their consumers, help stop and prevent fraud, and better detect unauthorized log-ins. These products empower innovative companies with AI tools that drive efficiency, responsiveness, and customer satisfaction. Twilio products that incorporate AI include:

- *Twilio Flex*, a programmable cloud contact center platform. Twilio Flex allows customers to easily use a virtual agent that can resolve a variety of customer issues and, if required, transfer customers to a live agent who will receive suggested responses based on previous interactions.
- *Twilio Autopilot*, an AI interface that bridges the gap between human agents and self-service bots. Autopilot allows developers to build intelligent IVRs, bots, and Alexa apps that are powered by Twilio-built Natural Language Understanding and Machine Learning frameworks. It turns nested phone trees into simple "what can I help you with" voice prompts and allows customers to use voice search to access a knowledge base.
- *Twilio Understand***,** which is transforming how companies interact with customers by using apps that convert intent into smarter IVRs or bots. It uses natural language to determine the

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intent of what someone is saying or texting, which allows developers to build more intuitive phone trees or smarter messaging bots. It turns speech into structured data objects and analyzes text from any communications channel (voice, video, text, Facebook messenger, home assistants like Alexa) with a single natural language understanding model.

- *Twilio TaskRouter AP.* This product helps route callers to the proper destination quickly, skipping some – or all – of the traditional phone menu. TaskRouter dynamically assigns messages to the human agents that can best handle them and can use bots to detect intent sentiment. That means that TaskRouter can leverage the power of artificial intelligence to understand the emotion in the caller and route the call accordingly. Messages and other types of data can be routed based on the "skills" required and the priority set.

Twilio's view on the European Commission's policy option proposals

Before going into detail on the different policy options proposed, Twilio would like to reiterate the importance of considering and promoting the benefits and efficiency gains resulting from the uptake of AI systems, especially in non-tech companies and industries, to the benefit of consumers. Twilio recommends that the EU work to encourage the adoption of AI as part of Europe's digital transformation, propose new legislation only when necessary to address identified gaps in current law, and produce clear liability frameworks that recognize the role of contract law and established principles for consumer redress. AI is a new technology, but it is being applied in areas where there are already existing legal regimes – such as data protection, consumer protection, product liability, and anti-discrimination – governing business activities. As the White Paper rightly notes, the existing body of EU law already applies to AI. Europe's future economic growth depends to a large extent on the ability of European companies across all industries to maximize the benefits of digitization and digital transformation. AI applications like those provided by Twilio present important opportunities for businesses to leverage digital technologies for growth. This is especially important for SMEs, where access to digital tools helps these companies to rapidly deploy enhanced capabilities in areas such as customer relations that were previously only available to larger companies. Beneficial deployments of AI can also play a role in preventing existing harms, for example, by identifying suspicious banking transactions or the use of telecommunications services for fraud or spam.

Twilio encourages European policymakers to take active steps to facilitate the use of low-risk or safe AI to improve the performance of companies and allow them to innovate, become more productive, and grow more quickly. A framework which uses a risk-based approach and assesses the risks from both the types of AI applications and their use cases strikes an appropriate balance between establishing rules for AI where they are required and using existing legal frameworks where they are not. This is the most effective way to encourage the deployment of AI in the EU while protecting individuals from harmful uses of AI. To support this transformation, the EU's larger digital strategy should focus on facilitating economical access to and use of the cloud infrastructure that underpins AI for all European companies.

To this end, Twilio supports leveraging and ensuring consistency of any AI legislation with existing EU rules such as the Product Liability Directive and the Product Safety Directive. AI-specific legislation risks creating overlapping obligations or differential impacts on different types of technology, particularly when it comes to national implementation. This outcome would not provide consumers

or businesses with legal certainty when it comes to the use of AI or create an enabling environment for the uptake of AI.

Twilio would also like to comment specifically on the issue of liability. As a general principle, liability should fall on the entity best positioned to mitigate the risk, and the liability framework should consider the intended use of products versus how companies may choose to deploy them. Most of the time, the entity best positioned to mitigate the risk will be the entity deploying an AI system, as it can define the use case for an AI system, foresee risks, and is closest to consumers who may suffer harm, making it easier for consumers to seek redress. Moreover, the risk of selling an AI product in an application not intended by the company that developed the AI should be with the entity making that conscious choice. As a result, Twilio recommends that liability issues in a B2B context be primarily governed by contract so that enterprises deploying AI can establish the capability and intended use of their AI system and take liability for its performance vis-à-vis the final consumer when used as intended or agreed in contract. Should the technology fail, the deploying entity will be able to seek redress through the enforcement of its contract with its AI developer.

Option 1: Soft-law approach

AI is context-specific. Many different specialized applications perform different functions while even more generalized technologies may be deployed in different ways. Soft-law approaches would be better able to take account of this diversity while also allowing the EU to benefit from the range of existing initiatives on AI at the national, EU, and international levels, such as work on principle and ethics codes, industry codes of conduct, and the work of the High-Level Expert Group on AI. For most deployments of AI, this approach would minimize unintended obstacles to the roll-out of AI across the EU and avoid the development of overly-prescriptive rules, which may not be suitable for future AI applications. This approach would allow for the co-creation of a risk-based framework for AI that protects consumers and ensures companies and policymakers focus on and deal with the most important issues. Twilio would welcome soft-law approaches and has already engaged in industry initiatives leading to self-developed rules and principles. Twilio is already an active member of business associations active in such matters, including ITI and BSA. An example of successful self-regulating work is Twilio's engagement against fraud and spam: Twilio sits on the board of the Alliance of Telecommunications Industry Solutions (ATIS) and co-chairs the Robocalling and Communication ID Spoofing group, which has been coordinating work on the implementation of the STIR/SHAKEN protocol in the United States with the goal to implement a system to digitally sign and verify calls, allowing consumers and business users to be confident that the caller ID information they are seeing has been verified.

The High-Level Group on AI has already worked extensively on developing guidelines. Sub-groups could be added that take into account different aspects of AI applications - B2B AI applications could be one of them.

Option 2: Voluntary labeling scheme

A trusted environment depends on the ability of customers to understand possible risks, their rights, and how to enforce them. However, Twilio cautions against voluntary labelling schemes as these may not be the most effective means of ensuring a trusted environment. Labelling, whether voluntary or mandatory, may create confusion for businesses and consumers alike because AI applications can be trustworthy in one setting while they may produce different effects in another setting, especially when deployed in a manner that the provider may not have envisioned. These nuances cannot easily be captured with a given set of labelling criteria. Labelling may also create a false sense of security among businesses deploying AI products, leading to careless or uncritical deployments that do not take adequate account of the full context and possible effects of AI. Further, premature labelling rules may curtail experimentation from industry groups that are also working to develop approaches to explain AI applications and their uses. Policymakers should encourage this experimentation and focus on effective approaches to transparency, which include both the AI system and the context in which it is used prior to pursuing labelling schemes.

Option 3: mandatory requirements on specific issues

Sub-option a) limited to specific categories of AI applications, e.g. Remote Biometric Identification Systems

Twilio does not use biometric identification systems. As a general principle, Twilio would like to emphasize the need for facilitating technological innovation within the boundaries of fundamental rights and safety. Rather than issuing case-by-case application-specific regulation, policymakers and the technology industry should work together to establish the framework of clear principles for a risk-based approach within which innovation can flourish. Rather than focus on the technology or application in the abstract, this should seek to balance risks related to the context of an application's use, the harms that may result, and the relevant legal framework already in existence. This framework can then be applied to biometric facial recognition or other future AI applications without a requirement for application-specific legislation for every new use of AI. This risk-based framework protects individuals from harmful uses of AI while encouraging the deployment of safe and trustworthy AI applications.

Sub-option b): Legislation for high-risk AI applications only

Twilio welcomes risk-based approaches to AI and encourages policy makers to consider the full context and the purpose of an AI system as they develop approaches to evaluating its risk.

Specific legislation to cover high-risk AI applications should only be considered if no existing laws sufficiently cover the risks presented by these applications. When identifying high-risk uses and high-risk sectors for the use of AI, policy-makers should explicitly define the high-risk uses subject to regulation and apply proportionate measures to maximize beneficial deployments while minimizing harms. Regardless of sector, when AI is used in back office or administrative functions where it does not present a high risk to consumers, there is little need to subject it to heightened standards such as conformity assessments or strict oversight. Any legislation for high-risk applications should use

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the risk-based framework outlined above and address identified gaps in the current legal framework that are specific to AI.

Sub-option c): Legislation covering all AI applications

Since AI risks will be context-specific, Twilio believes it is best to use existing context-specific legislation rather than omnibus AI regulation. Such legislation would likely have difficulty balancing the broad range of AI deployment scenarios and differing levels of risk involved. It would be extremely difficult to issue general legislation regarding all types of AI applications that covers all potential future harm to consumers, including by applications that cannot be clearly defined at this stage. Such legislation would leave businesses in legal uncertainty and would severely hamper AI developments or applications in Europe. Using a risk-based framework that addresses high-risk applications and their context and takes into account existing legislation is a better option than blanket regulation of all AI applications.

Option 4: A combination of all the above options

As previously noted, AI encompasses many different types of applications whose impacts vary based on wider context. In order to take account of this diversity and the risks of harm presented, a mix of approaches may be appropriate, in particular soft-law approaches for most applications that are low risk combined with a risk-based and context-aware approach to addressing high-risk applications. Twilio does not support legislation that would include policy options that are not clearly defined in content and scope, in particular technology-specific regulation or high-risk designations that do not take full account of context.

When it comes to the economic cost assessment of the Commission, Twilio would like to highlight that the actual economic cost goes beyond the application of each policy option. In particular, the European Commission does not consider the economic cost for businesses and society of not being able to develop and test certain applications. In addition, more regulation does not equal an increase in trust per se – consumer trust is linked to more aspects than a regulatory framework, especially if that framework is not understandable or visible to the end user.

Twilio wishes to see the development of a trusted ecosystem for AI development and deployment in Europe so that the company's customers can easily and confidently adopt AI-enabled tools that transform how they connect with end-user consumers. With a well calibrated policy framework, particularly regarding the delicate issues of a risk-management and liability regime for AI deployments, Twilio believes that AI can be a key driver of business innovation and economic growth in Europe for years to come. Option 1 alone, or in combination with a carefully crafted option 3 b), may be a step into this direction.

Twilio looks forward to further discussion with the European institutions and to contributing to an AI policy framework that delivers real benefits for all Europeans.

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