

# TollFreeNumbers.com

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Federal Communications Commission  
Ajit Pai, Chairman  
445 12th Street, SW  
Washington, DC 20554

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## **Re: WC Docket No. 17-192, CC Docket No. 95-155 – REPLY COMMENT FOR AUCTION OF TOLL FREE NUMBERS IN THE 833 CODE**

Dear Chairman Pai,

The FCC's current plan to have Somos bypass the Resporg system they administer and auction/sell 833 numbers directly to the Resporg's customers directly rather than through the Resporg's is NOT consistent with the current statutes.

Paragraph 58 in FCC 18-137 in which the Commission establishes Somos as the auctioneer for 833 auction reads as follows:

58. We establish Somos, the Toll Free Numbering Administrator, as the auctioneer for the 833 Auction. *We believe this role is commensurate with its present statutory and regulatory duties and its responsibilities.*

The very second sentence in paragraph 58, assigning Somos to be the auctioneer, is essentially their whole basis for assigning Somos as the auctioneer. Unfortunately, when you realize that they are requiring Somos to bypass the Resporg system that they are statutorily required to support, this is clearly false. They are essentially asking Somos to undermine the system which they are statutorily required to support.

If we break down that sentence it's saying three things. I'm going to document how all three of those things are incorrect. Requiring Somos to compete with and undercut the Resporgs is...

- 1. NOT in the statutes.**
- 2. NOT in their regulatory description (aka Somos Tariff).**
- 3. NOT in their current responsibilities.**
- 4. Even Somos said in their comments that bypassing the Resporgs would cause problems.**

## 1. Selling anything directly to the public is NOT in any statutes.

The Communications Act of 1934 was passed, June 19, 1934 and it gives the Federal Communications Commission (FCC), the broad power to distribute numbers as long as it's done "fairly and equitably." (see below)

### **47 U.S.C. § 251(e)(1)**

#### **(e)NUMBERING ADMINISTRATION**

#### **(1)COMMISSION AUTHORITY AND JURISDICTION**

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(<https://www.law.cornell.edu/uscode/text/47/251>)

There's only one statute for that so it's pretty straight forward and it gives them a lot of latitude, as long as they meet impartiality requirements. I won't debate the question of impartiality, though it is questionable whether they can be impartial for a *second role* if it contradicts their existing, primary role of supporting the Responsible Organizations (Resporgs), or the fact that virtually all their revenue comes from the organizations that the FCC is essentially requiring them to promote that the public bypass. There are also regulations that require government agencies to use competitive bidding to avoid the appearance of corruption or an insider deal but that's also not the issue here.

It's a little murkier though when it comes to the Toll Free Number Administrator, (TFNA) acting as the auctioneer, because unlike the FCC, there are numerous orders and statutes regarding the various forms that the TFNA (now Somos) has taken over the years. The FCC doesn't say that serving as the auctioneer IS consistent with the statutes. They say they BELIEVE it is consistent, because there isn't just one statute to quote here like there is for the FCC's authority. There are orders creating the DSMI, that was the first administrator, then they created the SMS/800. There is another order making the SMS/800 more independent from the original RBOCS allowing them to write their own tariff. There are probably half a dozen different orders that describe the roles of the TFNA over the years, and if you follow their footnote citations you will get even more confused. I spent several days tracking down and going through dozens of references to the various stages of the TFNA, but none of them ever even consider, let alone mention or reference anything about any version of the TFNA ever having anything to do directly with the public in any way shape or form.

I could list a dozen or more different sources and orders and while it might look impressive to fill a whole page of footnotes or have hundreds of pages of attachments, it wouldn't prove that it doesn't exist somewhere else, because you can't prove a negative by quoting all the sources that DON'T include something. You can make a good showing of it if there is just one statute or regulation, but since the TFNA has been called a number of things and evolved over the years, that's not the case. I can say quite certainly though that at no point has any version of the TFNA or anything like it, ever sold anything to the public or to the customers of their customers, the Resporgs. If they are only servicing the Resporgs it could be consistent with their role but the public auction the FCC is proposing is clearly NOT consistent *or even compatible with* the role of the TFNA.

I believe the FCC had good intentions and when they expressed their belief that establishing Somos as the auctioneer was consistent with their current role, because they had probably not decided to have them offer the numbers to the public and didn't realize how detrimental to the system that would be. If you take out the one paragraph about offering numbers to the public, it *would* be consistent with their role of supporting the Resporgs.

## 2. Selling anything directly to the public is NOT in Somos Tariffs and never has been

Tariffs have been in the news a lot in the past year, but this is a different meaning of the word tariff than Donald Trump is using. In addition to the taxes charged on imports, a tariff can also be the posted or fixed prices that utilities charge. Somos has a good description of their tariff on their current website. "The tariff contains the regulations, rates and charges applicable to the provision of the SMS/800 Toll-Free Number Registry (TFN Registry) (formerly the 800 Service Management System (SMS/800)) functions and support services for Toll-Free Numbers."

I've attached this as well as a page that explains why Somos files a tariff, and thirdly, their current tariff issued February 5, 2018. All three of these are included in **Attachment A**. Their tariff goes through in great detail every aspect of their business, but selling or auctioning numbers directly to the public is **NOT in the SMS tariff**. They've NEVER sold a single thing to the public, not to mention something competing with their own customers. The fact that it's not in the current (or any previous tariff), is the best evidence of all that it's clearly NOT commensurate with their present responsibilities.

While looking through the Somos website I found a picture that explains very easily HOW Somos works. This is from their website and probably shows better than a million legal documents that offering numbers directly to the public is NOT consistent with their current role.



This was on the Somos new website in 2015. I found and saved it from the Wayback Machine. The full website for context is also included in **Attachment A**.

## 3. Selling anything directly to the public is NOT in Somos current responsibilities.

I've also gone through every footnote and found a couple definitions of the TFNA, SMS Database, DSMI or NANPA and not only is it not in the definition of Toll Free Number Administrator (TFNA) but it isn't in any previous or similar database administration definition either. No number administrator like this, at least in the US, supports or has *ever* supported, both phone companies and their end subscribers.

## Definitions:

### 47 CFR § 52.101 - General definitions

- (a) **Toll Free Numbering Administrator (TFNA).** The entity appointed by the Commission under its authority pursuant to 47 CFR § 52.101(e)(1) that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.
- (d) **Service Management System Database ("SMS Database").** The administrative database system for toll free numbers. The Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about toll free numbers within their control. The Service Management System shares this information with the Service Control Points. The entire system is the SMS database.

### 47 CFR § 251 - Interconnection

#### (e) Numbering Administration

##### (1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the north American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating State commissions or other entities all or any portion of such jurisdiction.

### 47 CFR § 52.101 - General definitions

- (a) **Number Administration and Service Center ("NASC").** The entity that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.

The sources of these definitions are included in **Attachment B**. None of these definitions have ever included the end user or subscriber being able to obtain any service directly from the TFNA or NASC, and that change can NOT be said to be consistent or commensurate with their present statutory or regulatory duties or their responsibilities!

## 4. Somos said in their comments that bypassing the Resporgs would cause problems.

The fourth point is that Somos itself, said in their comments to the FCC that selling numbers to the public, *"would introduce unnecessary and potentially costly administrative problems,"* and *"undermine this delegation of responsibility to Resp Orgs."*

Somos did say in their comments to the FCC that they could act as auctioneer in paragraph C, but that was *after* they said it had to be through the Resporgs in paragraph B. So their statement that they could handle it was based on their previous statement, that it had to be done through the Resporgs. Paragraph B was over a full page, of the 8 page comment and is extremely well written and says not only that it had to be done through the resporgs but explains WHY they can't open it up to the public. I've also read every comment and every reply and there's no reason to open this up to the public as strong as Somos' reasons not to!

### **B. Auction Participation Should Be Limited to Resp Orgs**

To the extent the Commission implements an auction-based assignment mechanism, Somos supports the Commission's further proposal to limit participation in any auction to Resp

Orgs, as defined in 47 C.F.R. § 52.101(b).<sup>8</sup> Resp Orgs are the only entities that possess both the expertise and the functional capabilities needed to effectively participate in a market-wide auction proceeding. They are essential partners who bring stability to the toll-free numbering process by ensuring that TFNs are assigned, routed, and managed accurately and in accordance with the Commission's rules. Further, as the Notice suggests,<sup>9</sup> Resp Orgs have a system-wide perspective that would allow them to make markets in an auction and guide subscribers to bidding strategies that maximize value for the system as a whole.

Somos does not support direct subscriber participation in any TFN auction because it would introduce unnecessary and potentially costly administrative problems. Somos believes that any TFN auction mechanism should build on the functionalities of the SMS/800 database and be implemented consistent with the technical and procedural characteristics of that database. To achieve those efficiencies, Somos believes that it makes sense to limit auction participation to the Resp Orgs that are currently certified to have access to the SMS/800 database.<sup>10</sup> Having access to the SMS/800 database requires Resp Orgs to take on defined obligations that ensure that the integrity of the database is maintained and that TFNs operate correctly, including becoming certified in the complex process of routing TFNs. Allowing subscriber participation in TFN auctions would undermine this delegation of responsibility to Resp Orgs and would require either constructing an auction mechanism outside of the existing SMS/800 database or qualifying a large number of new entities to access and use that database. Either of these options would be burdensome and complicated, thus impeding an effective and efficient auction.

Somos full comments date 11/7/2017 are included in **Attachment C**. With Somos comments in mind, that they can essentially only administer an auction through the Resporgs, I'd like to review paragraph 60 of FCC-18-137A1, 9/27/2018. This full order included in **Attachment D**.

60. One commenter posits that the present Toll Free Numbering Administrator should not serve as the toll free number auctioneer because Somos "has no experience in conducting auctions" and it "would be called upon to develop entirely new [auction] processes." We disagree. *Somos has asserted that it is fully capable of executing the Commission's proposed auction*, and we have no basis on which to question its assertion. Moreover, given the considerable expertise in number assignment and administration that Somos has gained since the Commission formally designated it as the Toll Free Numbering Administrator, we are confident that Somos will perform its auctioneer duties in accordance with the procedures established by the Auction Procedures Public Notice.

Somos did not say it was capable of executing the Commissions proposed auction. It said that it was capable of administering an auction among the Resporgs, and said quite clearly that it would cause major problems to allow the public to participate. This is not a small point, these are major problems, changing both their role and the statutory role of the Resporgs.

### **Why does this really matter?**

The main point of this letter is to point out that asking Somos to sell competing services at a lower price to the end users of the Resporgs that they are required to support, isn't commensurate with their existing role at all. Even more than that, it actually *CONFLICTS* with their current statutory responsibilities, and they shouldn't be forced to do something that literally hurts and may ultimately put some of the customer Somos is required to support, *out of business*. I also think it's important to explain why I am

really pushing this point, because it will ultimately be extremely bad for the toll free industry to make such a sweeping change, and make no mistake that's what this really is.

The FCC added the option to allow customers to go directly to Somos in an attempt to give consumers more options and decrease the cost by increasing the competition. That all sounds good on the surface, but just like offering a free public health insurance option wouldn't increase competition, it would decrease the consumers options and destroy the free market. The same thing will clearly happen in the toll free industry. No business can compete with the vendor or supplier of an item that's offering it for free to the public. The FCC is directing Somos to accept bids for free and at the same time allowing them to spend any amount of money they want on the software and infrastructure which they'll take out of the proceeds.

No resorg can compete with that. It will take considerable time and money to create a system to accept customer bids, collect the payments and submit those bids to Somos, make all the payments and refunds, not to mention promoting it, answering questions, and explaining it for customers. No Resorg is going to invest all that time and effort to do this, especially for a test, just to then have Somos offer it for free. They'll all just not talk about it and refer the few customers that do ask for it, to Somos. That means the only ones that know who the customers even are, have no incentive to even participate or promote it, and the consumer has NO choices at all. Every customer that wants an 833 number will be forced to go through Somos, which definitely explains the "costly administrative problems" they predicted.

Afterwards, Somos will of course declare it a success no matter how it goes, and say that they now have this great capability for all future code openings and even the dropping numbers. In their comments, Somos said it would, "undermine this delegation of responsibility to Resp Orgs." In other words, in one foul swoop, they will have taken the number acquisition responsibility away from all Resorgs. This isn't creating a free market, it's destroying it. It's not increasing the competition, it's killing it, just like offering a free public option for health insurance would do to the healthcare industry.

The FCC NPRM 9/28/17 asked for comments about the TFNA administering the auction (paragraph 24) but at that point nobody would have expected an auction to be open to the public, something that had never been done before. The Somos comments were quite clear that they could NOT do it so why would anyone expect that the FCC would both require Somos to administer it as well as open it up to the public, bypassing the Resorgs. This combination wasn't foreseeable and nobody had a chance to consider how this combination would impact the industry.

### **There are three Solutions**

Again, I believe the decision to allow the public to bypass their Resorgs and go directly to Somos, was made after the decision to have Somos administer it and after they wrote the opening. So, at the time they wrote the opening, it actually was more *commensurate with its present statutory and regulatory duties and its responsibilities*, and that was probably a much more reasonable statement than it is now. Whoever decided to allow the public to bypass the existing system, didn't realize how that made the basis for choosing Somos as the administrator false, and the problems it would cause Somos or what it would do to the whole Resorg System and the toll free industry.

Somos may change their tariff but that doesn't fix the problems that Somos said this would cause, or make the FCC's statement true. If Somos changes it's tariff, that could actually be seen as an admission

that the FCC's statement is FALSE. Changing the tariff to include things not in the statutes is also very problematic and wouldn't make it comply with the statutes.

On a side note, I think it's also appropriate to point out what Commissioner Micheal O'Rielly said in his comments about the FCC-18-137 Order, *"exactly how is it that no one asked what Somos' estimated costs would be?"* He would have preferred a *"competitive bidding process, rather than designate it to the toll free administrator automatically."* I believe just putting it to bid could easily have saved 80% of the cost without diminishing at all the results.

This is a FATAL flaw, because in plain English, what they're doing isn't as legal, or statutorily consistent, as they suggested it was, to say the least. The FCC still has time to fix this, but they have to do one of at least three things that could remedy this.

1. They could preclude the public from the auction.
2. They could specify an independent outside organization to administer the auction who doesn't already have a competing statutorily defined responsibility.
3. They could change the regulations regarding the TFNA's role and the whole system they support, allowing them to compete with the Resporgs that they support.

**Those are the only three options I see at this point.**

Somos won't come out and say directly that they can't do what the FCC (their BOSS) wants, and what they originally suggested, but if you read their own comments carefully, they're saying it as clearly (and politely) as they can. Stopping and taking a breath to consider the very real ramifications and options, (as much as we all want to get this over with) is well worth any small additional delay. We all want this to be a success and beneficial to the industry, but the current plan won't do either of those. There's a good chance that whatever we do for this "test" will become the new normal or mean we never do anything else like this.

I love the toll free business and have spent two and a half decades promoting and helping everyone in it, and can't sit idly by and watch it be hurt like this.

Very sincerely,



Bill Quimby  
President of TollFreeNumbers.com

Attachment