



P.O. Box 8122  
Bridgewater, NJ 08807  
www.somos.com

September 7, 2018

Ex Parte Filing

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: WC Docket 17-192, Toll-Free Assignment Modernization

Dear Ms. Dortch:

Ann Berkowitz, and the undersigned, of Somos communicated with Ann Stevens, Heather Hendrickson and William Andrle of the Wireline Competition Bureau, by telephone and email<sup>1</sup> regarding the release of the White Copy draft of the Commission's Report and Order in WC Docket 17-192.

Somos, the neutral Toll-Free Numbering Administrator, does not take a position as to any policy issues in the Report and Order. Somos did wish to point out two instances in the order where the current wording cause some confusion, and one preference for how to refer to Somos in the possessive form.

1) 47 CFR 52.103

In paragraph 89, the rule in 47 CFR 52.103 is misstated and this has been an issue in the industry for nearly two decades. The four month rule in 52.103(d) states "Disconnect Status. Toll free numbers may remain in disconnect status for *up to* 4 months" (emphasis added). Paragraph 89, however, states, "Section 52.103(d) requires disconnected numbers to stay in Disconnect Status for a period of four months, and then go to Spare Status at the end of that period."

That is a very important distinction. There has been controversy for years in the industry over whether this means a number can be spared before four months or whether the four months is an exact number. There have been several efforts to clarify, most recently in the North American

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<sup>1</sup> Attached as Exhibit 2.

Numbering Council Toll-Free Assignment Modernization Working Group report (“NANC TFAM report”)<sup>2</sup>. The report states in part, “[A]n additional recommendation flowed from varying interpretations of the four month disconnect period referenced in the FCC rule – which has subsequently led to different interpretations and procedures being used by different RespOrgs. The exact language indicates that a toll free number “*shall remain in disconnect status for up to four months.*” A subsequent December 6, 2000 letter from L. Charles Keller of the FCC’s Common Carrier Bureau to Mike Wade of DSMI indicated that the *rule should be read to require that numbers had to remain in disconnect, or a combination of disconnect and transition status, for the full four months* – in other words that the “up to” language was no longer operative.”<sup>3</sup>

If the Commission means to clarify that four months is an exact time, not “up to” four months, that needs to be very explicit and the Final Rule section needs to have that change as well. If the Commission is not changing the rule at this time, we ask that the Commission include the words “up to” before four months in paragraph 89. Not being clear on this will further cloud an already confusing situation. Somos is not asking the Commission to follow one way or the other. Somos is only asking the Commission to be absolutely clear about the intent of this paragraph.

2) Paragraph 66 and 25%.

In paragraph 66, the Commission discusses what to do if the auction proceeds would over five years cause a decrease in rates of greater than 25%, in which case excess proceeds will be shifted to the NANPA. Is this 25% at the initial year, or a total of 25% combined for five years running? For example, assume the Somos revenue requirement is \$56m, as it is for the current Somos tariff.<sup>4</sup> Auction net proceeds of \$14m would equal 25% of that year. However, auction net proceedings equaling 25% of five years would equal approximately \$70m (depending on the next four years revenue requirements). Somos does not take a position on which way this paragraph should read but we ask that the Commission clarify this in the final Report and Order.

3) Somos’s vs. Somos’

On this matter, we do take a position. Somos prefers the possessive form to be Somos’ rather than Somos’s. This appears in paragraphs 58, 61, and 65 and footnote 143. Somos humbly requests that those instances of “Somos’s” be edited to be “Somos’” in each instance where it appears in the Report and Order.

We thank you for your consideration.

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<sup>2</sup> Attached as Exhibit 1

<sup>3</sup> NANC TFAM Report, at p. A-8 (attached).

<sup>4</sup> Somos, Inc. F.C.C. Tariff No. 1 (issued Feb. 5, 2018) (“SMS/800 Tariff”), *available at* <https://s3.amazonaws.com/files-prod.somos.com/documents/SMS800FunctionsTariff.pdf>.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joel Bernstein". The signature is fluid and cursive, with the first name "Joel" being more prominent than the last name "Bernstein".

Joel Bernstein  
Vice President, Regulatory and Public Policy  
Somos, Inc.  
[jbernstein@somos.com](mailto:jbernstein@somos.com)  
P.O. Box 8122  
Bridgewater, NJ 08807-8122  
844-HEY-JOEL  
[www.somos.com](http://www.somos.com)

cc : Ann Stevens  
Heather Hendrickson  
William Andrie

## Exhibit 1

# Recommended Rule and Policy Changes: Toll Free Number Assignment Modernization

Report to the FCC of the  
NANC Toll Free Assignment Modernization (TFAM) Work Group

June 4, 2018

***Report to the FCC of the NANC TFAM Working Group  
Recommended Rule and Policy Changes  
June 4, 2018***

**NANC TFAM Working Group Members**

<b>Organization</b>	<b>Primary /Alternate</b>	<b>Name</b>
<b>Co-Chairs</b>		
Ad Hoc Telecom Users Committee	Co-Chair	Susan M. Gately (Co-Chair)
Google	Co-Chair	Craig Lennon (Co-Chair)
<b>Voting Members</b>		
800 Response	Primary	David Greenhaus
Ad Hoc Telecom Users Committee	Primary	Susan M. Gately
AT&T	Primary	Jackie Flemming
AT&T	Alternate	Joyce Smith
Bandwidth	Primary	Briana Sullivan
CenturyLink	Primary	Ken Shomaker
CenturyLink	Substitute	Pam Cox
Cox	Primary	John Clark
Cox	Alternate	Beth Carnes
CTIA	Primary	Matthew Gerst
CTIA	Alternate	Jeff Simmons
Fatbeam	Primary	Gregory D. Green
Frontier	Primary	AJ Burton
Google	Primary	Craig Lennon
NARUC – MO	Primary	Commissioner Scott Rupp
NARUC – MO	Substitute	Alexander Antal
Navajo Nation TRC	Primary	M. Teresa Hopkins
Peerless	Primary	Julie Oost
Sprint	Primary	Karen Riepenkroger
Sprint	Alternate	Shaunna Forshee
TDS	Primary	Paul Nejedlo
Vonage	Primary	Darren Krebs
<b>Non-Voting Members</b>		
Neustar	Primary	Tom McGarry
Somos	Primary	Joel Bernstein

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## Recommended Rule and Policy Changes: Toll Free Number Assignment Modernization

### Mission statement:

The Mission of the Toll Free Number Assignment Modernization (TFAM) Working Group is to consider the questions raised in the FCC's December 7, 2017 Letter to the NANC Chair re: Toll Free Assignment Modernization and following that consideration to provide a written report to the Commission in response to those same questions. Specifically, the TFAM working group was to consider the following three areas of inquiry in relation to the overall proposals outlined in ongoing FCC Docket 17-192 and attempt to develop consensus opinions where possible.

1. *Market-based approach to Number Assignment:* Notwithstanding the Commission's proposed revision to the first-come, first served rule, should the Commission revise any of its other current rules (such as the general definitions, lag times, or caps on toll free number reservations) to promote a market approach to assigning toll free numbers? What are the implications of such revisions?
2. *Development of a secondary market:* Should the Commission revise its current rules (including the hoarding and brokering rules) to promote development of a secondary market for toll free numbers? What are the implications of those rule revisions?
3. *Set aside/reservation of desirable TFN for Government use:* Should the Commission set aside certain desirable toll free numbers for use, without cost, by government or nonprofit health, safety, education, or other public interest organizations? If so, how should this number set aside system be structured and what should be the roles, if any, of the Commission and the Toll Free Number Administrator? What are the implications of the Commission setting aside certain numbers for these purposes?

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## **Background**

In September of 2017 the FCC issued a Notice of Proposed Rulemaking (NPRM) on modernizing toll free number (TFN) assignments seeking comment on proposed revisions to its existing rules and the impact of those rules on the equitable and efficient use of toll free numbers, a finite resource.<sup>1</sup> The NPRM sought comment on a number of issues, among them amending the Commission's "first-come, first-served" rule in a manner that would allow for the use of auctions to assign certain toll free numbers (with a specific proposal to conduct a single round, sealed-bid Vickery auction for the roughly 17,000 unassigned toll free numbers that had been sought by multiple parties in the 833 toll free code). The NPRM also sought comment on allowing a secondary market for toll free numbers and on setting aside toll free numbers necessary to promote health and safety. Comments and Reply Comments on the proposed rule changes contained in the NPRM were submitted on November 13, 2017 and December 12, 2017 respectively. The docket remains open and the Commission is currently considering comments from a range of stakeholders in response to the NPRM.

In early December 2017, three new Working Groups were established within the newly constituted North American Numbering Council, one of which was tasked with evaluating Toll Free Number Modernization Issues (TFAM Working Group). In a December 7, 2017 Letter from Chris Monteith, Chief of the Wireline Competition Bureau to the NANC Chair re: Toll Free Assignment Modernization, a specific directive was given for the TFAM Working Group to address three distinct questions and for the NANC to approve and submit a written report on the Working Group's findings on these issues within four months. The questions directed to the TFAM Working Group can be found in the mission statement above. The first of the three questions sought identification of changes to existing administrative rules in the event of adoption of a market-based assignment mechanism. The second two questions queried the Working Group first as to whether a particular policy change should be implemented relative to toll free number assignment and use, and then what administrative rule changes would need to be made to implement such a change.

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<sup>1</sup> See generally *Toll Free Assignment Modernization, Notice of Proposed Rulemaking*, FCC 17-124 (Sept. 28, 2017).

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The membership of the TFAM Working Group was announced by FCC Public Notice on February 5, 2018. Shortly thereafter, the due date of the TFAM Working Group report from the NANC to the Wireline Competition Bureau (Bureau) was extended by one month to June 7<sup>th</sup>.

## **Deliberation Process**

The TFAM Working Group held its first full meeting via web and audio conference on February 15<sup>th</sup>, 2018. The initial meeting made clear that there was some ambiguity in the wording of the referral questions resulting in uncertainty within the Working Group as to what specifically was being asked. This was particularly true relative to the first of the three questions. Following the February 20<sup>th</sup> meeting, the co-chairs sought clarification from the Bureau. Specifically, the Working Group asked the following relative to the first of the three issues referred to it:

“The language [the first of the 3 questions] above can be read in two or three very different ways.

- We are seeking guidance on whether the question is asking first should the Commission promote a market approach to assigning toll free numbers (and if the consensus is yes, then how should its rules be revised and what are the implications of the rule changes)?
- Or instead, does the question presume a movement away from first-come, first-served and is it asking should the Commission revise rules other than those already proposed in the NPRM to facilitate that process?
- Or the third possibility, is it asking what rules should be revised to promote a market approach in the event the Commission doesn’t revise the first-come, first-served rule?”

The Working Group received the following response on February 22nd: “The second option: presume the first-come, first-served rule is changing and tell us whether they think rules should be changed as well.”

Hampered by a general lack of support for a change to the first-come, first-served rule, the group continued exploration and deliberation of the three questions. By mid-March it became apparent that despite the many hours of meetings that had been held the Working Group would not meet its reporting deadline without adopting an alternate approach. Working Group

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members were divided into three sub-groups (or “thought groups”) to assess each area of inquiry in more depth and report back to the full Working Group. While all members were assigned to a single thought group, all were invited to participate in the thought groups for each of the other questions as well. Several Working Group members participated in the multiple thought groups. After research and discussion, each of the thought groups developed a report and issued recommendations during late April and early May. The sub-groups then brought their respective reports to the full TFAM Working Group and further deliberations were undertaken. The result is a comprehensive look at the areas of inquiry raised in the FCC’s December 7, 2017 Letter to the NANC Chair, culminated in this report. The report summarizes the conclusions and attaches each sub-group’s respective report (as Appendices A, B and C).

In summary, in response to the first question the TFAM Working Group has recommended changes to specific administrative rules that would be necessary in the event the FCC implements a market approach to toll free number assignment and discusses potential complicating implications of a movement to a market-based assignment mechanism. In response to the second question, there was no support for developing a full-scale lawful secondary market; however, the Working Group recommends minor revisions to the Commission’s brokering rule to allow for the transfer of a toll free number in three specific instances. Finally, in response to the third question, the Working Group recommends against toll free number set asides for government or non-profit or public interest use. This decision was reached largely because historical data does not demonstrate a need that would outweigh the costs that would arise in establishing the complicated process needed to identify a toll free number’s desirability for such a set aside.

A more detailed discussion of the results of the TFAM Working Group’s analysis of the each of the three questions referred to it is described below. The detailed reports and discussion of the deliberations of the each of the three questions are found in Appendices A – C attached.

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**Rule Changes to Promote a Market-Based Approach to Toll Free Number Assignment**

The working group's first area of inquiry was assessing which of the Commission's existing rules would need to be revised in the event a market-based approach is implemented for the initial assignment of toll free numbers. Specifically:

*Notwithstanding the Commission's proposed revision to the first-come, first-served rule, should the Commission revise any of its other current rules (such as the general definitions, lag times, or caps on toll free number reservations) to promote a market approach to assigning toll free numbers?*

*What are the implications of such revisions?*

The Working Group evaluated administrative rule changes that would be necessary to make a market approach to assigning toll free numbers successful (despite little, if any, support within the group for the concept of revising the first-come, first served rule). Details of the deliberative discussions that took place in developing the rule change recommendations are contained in Appendix A to this report. Proposed language for each of the recommended rule changes is contained in Appendix D.

The recommended rule changes are predicated upon assumptions that are fully detailed in Appendix A. First, and most importantly, it was assumed that the Commission will be moving forward with a market-based assignment mechanism (the exact form of which is unknown). The rule changes recommended in response to this question are designed to work with a market-based assignment mechanism for initial number assignment and may or may not be relevant to adoption of a secondary market for already assigned numbers (additional changes that may be necessary for secondary market operation were part of the deliberations on the second of the three referral questions and are discussed in the next report section.)

Rule changes recommended by the Working Group in response to this first question include:

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- Changes to the definitions found in Section 52.101 (a) “NASC”, (b) “Responsible Organization” and (e) “Toll Free Subscriber.”
- Introduction of one new definition in Section 52.101 (g) “Toll Free Customer” and two new definitions in Section 52.103 (a) (9) “High Value Status” and (a) (10) “Transitional Status.”
- Changes to the rules applicable to two status categories in Section 52.103 (d) “Disconnect Status” and (f) “Unavailable Status”

In addition to the rule revisions recommended here, as a result of its deliberations regarding the implications of the proposed revisions, the Working Group strongly recommends that in developing the rules for an auction or other market-based assignment the Commission include rules and protections to ensure that the new mechanism does not preclude some participants from obtaining TFNs and that rules specifying the working of any new market-based TFN assignment methodology include strong and well-developed prohibitions to protect against conflicts of interest and collusion. There was consensus that the present first-come first-served assignment mechanism works well and in replacing it the Commission should acknowledge and take steps to protect against the inherent potential risks to the fair, efficient and non-discriminatory assignment of toll free numbers that could arise under a market based mechanism. These include the potential for it to benefit speculators and those with deep pockets to the detriment of others, to cause a spike in disputes among the parties seeking TFNs, and to hasten TFN exhaust, even with the rule changes recommended above.

### **Recommendations Regarding Establishing a Secondary Market for Toll Free Numbers**

As a second area of inquiry, the working group was tasked with examining questions related to the establishment of a secondary market for toll free numbers and any necessary rule changes associated with its recommendations. Specifically:

*“Should the Commission revise its current rules (including the hoarding and brokering rules) to promote development of a secondary market for toll free numbers? What are the implications of those rule revisions?”*

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The Working Group recommends that the Commission's current rules be maintained in a substantially similar form and effect because they continue to play an important role in the equitable and efficient use of toll free numbers as discussed further below. However, the Working Group acknowledges that minor revisions to the Commission's brokering rule would be beneficial in (1) allowing toll free number subscribers to transfer their rights to use a toll free number when that subscriber sells business assets associated with its toll free number; (2) if the toll free number is mistakenly returned to the spare pool and picked up by another Subscriber; (3) to correct a fraudulent or unauthorized transfer of a toll free number or inadvertent or unauthorized transfer of a Shared Use number. Appendix B details the issues evaluated and work done by the Working Group in reaching consensus on this issue. Appendix D contains the full proposed rule change.

**Recommendations Regarding the Set-Aside of Toll Free Numbers for Government and Other Public Interest Use**

Finally, the third area of inquiry sought a recommendation relative to the set aside of toll free numbers for use by government and other public interest organizations. Specifically:

*“Should the Commission set aside certain desirable toll free numbers for use, without cost, by government or non-profit health, safety, education, or other public interest organizations? If so, how should this number set aside system be structured and what should be the roles, if any, of the Commission and the Toll Free Numbering Administrator? What are the implications of the Commission setting aside certain numbers for these purposes?”*

Based on historical data and additional facts gathered by the Working Group, the Working Group reached consensus that the Commission should not set aside certain desirable toll free numbers for use, without cost, by government or other public interest organizations primarily for the following reasons:

- **Infrequency** of historical need for Commission action regarding toll free numbers for public interest purposes. The Working Group identified only three prior instances of toll free number set asides, which did not justify a change to the current rules.

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- Determining a number's **"desirability"** is generally **ambiguous** and exceedingly difficult to accomplish. The Working Group determined that a number typically becomes desirable after it has been established, therefore determining and reserving a desirable number prior to assignment can be an incomplete solution as a TFN may not become desirable until after it has been assigned. Even among the three previously reassigned TFNs it is questionable as to whether those numbers had been established as "desirable."
- **Determining qualifying organizational eligibility is difficult** and will likely require Commission review and approval on a case by case basis, and place undue process burden on the Commission.
- Availability of obtaining a toll free number has not been shown to be **cost prohibitive** today.

Details of the deliberative discussions that took place in assessing the need for toll free number set asides for government use are contained in Appendix C to this report.

## Conclusion

The TFAM Work Group was tasked with assessing difficult issues in a short time frame in the December 7, 2017 Letter from the FCC to the NANC Chair. In the end, the Working Group felt that overall the rules and processes in place today are working and need minimal adjustments. Where changes were warranted the working group has laid out and recommended such changes. No empirical evidence was provided or found as to the amount of money that would be raised or the associated costs to the FCC, RespOrgs, the TFNA and the public (among others) from the revision to the first-come, first-served rule. Rule changes that would be necessary to make a market based assignment mechanism work have been proposed and potentially damaging implications from adopting a market-based mechanism have been identified and discussed. Minor revisions to the Commission's brokering rule to allow for the transfer of a toll free number in three specific instances have been proposed in lieu of the opening of a lawful secondary market for toll free numbers. Finally, based on historical research and the difficulties involved in assessing a toll free number's desirability, a recommendation has been proffered that the FCC not set aside toll free numbers for government use or public interest



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use. That said, should the Commission disagree, the TFAM Working Group has presented additional options for consideration. The Toll Free Modernization Working Group appreciates this opportunity to provide its recommendations to the Commission and stands ready to address any further questions.



NANC TOLL FREE ASSIGNMENT MODERNIZATION WORKING GROUP

# Appendix A

*Report regarding first referral question: Rule changes necessary to implement a market-based toll free assignment mechanism*

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## ***Appendix A***

### ***NANC TFAM Working Group Report regarding first referral question:***

#### ***Rule changes necessary to implement a market-based toll free assignment mechanism***

## **Results of Deliberation on the First Referral Question from the FCC: Rule changes necessary to implement a market-based toll free assignment mechanism**

The Federal Communications Commission (FCC) in a December 7, 2017, letter directed the North American Numbering Council (NANC), via its Toll Free Numbering Modernization Issues Working Group (TFN Working Group) to address three questions regarding its Toll Free Assignment Modernization Notice of Proposed Rulemaking (TFAM NPRM) on modernizing toll free number assignments to better promote the equitable and efficient use of toll free numbers. This report section addresses the first of those questions, which is:

*Notwithstanding the Commission's proposed revision to the first-come, first-served rule, should the Commission revise any of its other current rules (such as the general definitions, lag times, or caps on toll free number reservations) to promote a market approach to assigning toll free numbers?*

*What are the implications of such revisions?*

In response to the referral question the Working Group evaluated administrative rule changes that would be necessary to make a market approach to assigning toll free numbers successful (despite scant, if any, support within the group for the concept of revising the first-come, first served rule). To answer the questions above the TFN Working Group held several conference calls and smaller breakout group meetings to discuss what changes would need to be made to the FCC's rules to promote a market approach for the assignment of toll free numbers and the implications of those revisions. To guide its discussion the TFN Working Group referred to:

- the specific sections of the FCC's rules (Sections 52.101 to 52.09 of CFR 47) that address toll free number assignment and management,
- specific discussions of the issues and questions posed in the TFAM NPRM relating to the rule changes that would be required in such a scenario (paragraphs 28 – 34),

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- responses from the Bureau on February 22, 2018 to inquiries about the referral question itself posed by the NANC TFAM chairs on February 20, 2018,
- various source documents provided by members of the working group (identified in Appendix E)

The TFAM Working Group notes that the rule changes recommended here include revisions to outdated nomenclature and practices that have been adjudicated via letter by the FCC in addition to those that are necessary in the event the Commission goes ahead with the plan proposed in the NPRM to replace the current first-come first served rule with a market-based approach such as an auction.

#### **Assumptions Underlying Proposed Rule Revisions**

- That the FCC will be moving forward with a market-based assignment mechanism (per the Bureau's February 22, 2018 response to questions from the Working Group).
- That the rule changes sought in the question referred to the TFAM Working Group are designed to work with a market-based initial assignment mechanism. These rules changes may or may not be relevant to adoption of a secondary market for already assigned numbers (additional changes that may be necessary for secondary market operation were analyzed separately.)
- That the TFAM Working Group is currently unaware of specific rules and procedures that will ultimately be utilized for implementation of the market-based mechanism and that it is possible that the TFAM Working Group may have developed different suggestions if this were further clarified.
- The rules changes that are suggested here are generally compatible with assigning numbers under both the current first-come, first-served mechanism or a market-based mechanism.
- That an implication of adoption of a market-based assignment mechanism for toll free numbers is enhancement of the prevalent belief that toll free subscribers own their numbers – regardless of the fact that all that will be assigned is the right to use the

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numbers (a public resource). Ownership of toll free numbers is a common misperception among toll free subscribers today which is likely to be reinforced if numbers are paid for. This must be dealt with in some manner, but it is not addressed as part of the rules that the Working Group evaluated. The FCC will likely need to promulgate some additional rules and both RespOrgs and the general public will need to be clearly informed of the specific ownership rights that accompany a toll free number assignment (including but not limited to the right to choose a RespOrg and carrier, the right to direct the routing and termination of traffic and the right to text enable the number (or choose not to)).

- That the efficacy of any rules that exist today and any changes we may suggest will be frustrated by a failure of FCC to enforce current, revised and any new rules. It is common knowledge that there is a “black market” for hoarding, warehousing, and brokering of toll free numbers. That this black market has existed, often quite out in the open and without diligent FCC enforcement is reinforced by the discussion found at para 31 and footnote 55 of the TFAM NPRM.

#### **Discussion of Rules Reviewed and Recommended Revisions if any**

To respond to the first of the three questions referred to the Toll Free Assignment Modernization Working Group, the FCC rules governing the assignment and management of toll free numbers codified in CFR Title 47 Part 52 were analyzed to identify rules that would need to be changed.

Following group discussions, the existing rules were identified as “not needing change” or “potentially in need of change.” Those rules identified as “potentially in need of change” were then analyzed in more detail. Rule changes are not being recommended for all rules initially identified as potentially in need of change. Recommended rule changes are identified on the list below. The section that follows contains a summary of the discussions and factors that resulted in recommended rule changes, and recommendations for no change for those rules.

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CFR Title 47: Telecommunication

Part 52—Numbering, Subpart D—Toll Free Numbers

§52.101 General definitions.

Rules (c), (d) and (f) – ***no change needed***

Rules (a), (b) and (e) – ***changes potentially needed***

*Suggested addition of new rule (g) definition of “Toll Free Customer”*

§52.103 Lag times.

(a) Definitions

Rules (1) – (7) and (9) – ***no change needed***

Rule (8) – ***change potentially needed***

*Suggested addition of new rules (10) status code for “High-Value numbers” and (11) for “Transitional” numbers*

(b) Reserved Status – ***no change needed***

(c) – (f) Rules for status categories – ***potential changes needed***

§52.105 Warehousing – ***potential changes needed***

§52.107 Hoarding – ***potential changes needed***

§52.109 Permanent cap on number reservations – ***potential changes needed***

## **Analyses and Recommendations for Individual Toll Free Rules**

### **Discussion of Definition (a) from CFR 47 Section 52.101.**

The first definition in Section 52.101 is for the *Number Administration and Service Center* (“NASC”). It is but the first of several references to the former DSMI (Toll Free Numbering Administrator (TFNA)), and its functions that are specifically enumerated in the rules. The Working Group recommends updating the rules to first define the TFNA, and then to replace references to DSMI to TFNA throughout. Rule 52.101(a) should be replaced in its entirety with the following:

- (a) *Toll Free Numbering Administrator* (“TFNA”): The entity appointed by the FCC under its authority pursuant to 47 U.S.C § 251 (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.



## ***Appendix A***

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##### *Discussion of Definition (b) from CFR 47 Section 52.101.*

The group determined that the definition (b), Responsible Organization, in this section does not accurately capture the entirety of the RespOrg's function or responsibilities, particularly as they relate to a participation in a market-based assignment mechanism. It was determined that changes to a market-based assignment mechanism could be accommodated under the present definition, but that an expansion of the definition would be useful nonetheless. The following issues were also discussed in relation to this definition.

- Review of the NPRM revealed that the auction proposal contemplated that at a minimum RespOrgs would be participating in auctions. We discussed that knowing which other entities would be eligible to participate in an auction or other market-based mechanism would impact how and if this definition needs to be adjusted. It remains unclear whether RespOrgs will participate only as agents of their customers or additionally on their own behalf, and whether customers themselves or others acting as agents on behalf of customers will be allowed to participate as well.
- There was concern expressed that RespOrgs may end up being required to participate in auctions to obtain numbers, and that doing so may be prohibitively expensive for some. The FCC should not mandate that all RespOrgs participate in market-based assignment of numbers.

It was recommended that the rule (definition) be adjusted to acknowledge that some (but not necessarily all) RespOrgs may be participating in the new assignment mechanism, and some may not. Addition of the following language is suggested: "RespOrgs may, but are not required to, act as agents for customers interested in obtaining numbers through the market-based mechanism."

##### *Discussion of Definition (e) from CFR 47 Section 52.101.*

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The Group discussed concerns that the current definition (e) of Toll Free Subscriber is not completely accurate and that it should be revised. Under the current definition a party becomes a toll free subscriber when it requests that a RespOrg reserve a number for it from the SMS database. General industry agreement exists that a party should not be categorized as a toll free subscriber until after the number is assigned. This clarification is necessary for adoption of a market based mechanism but would be beneficial even if a market-based mechanism is not adopted.

The Group recommends that the FCC replace the existing definition (e) of a Toll Free Subscriber with one that distinguishes between those desiring to obtain numbers, and those that have been assigned numbers. This distinction will be necessary and useful, particularly since the market-based mechanism described in the NPRM suggests that toll free subscribers will be able to request numbers as well as RespOrgs. Since an auction scenario may result in situations in which those bidding on numbers won't ultimately have those numbers assigned to them, the recommendation is for the FCC to adopt definitions in which a toll free customer is defined as someone seeking a number, and a toll free subscriber is someone who has been assigned a number and has the right to choose a RespOrg and to direct all aspects of the use of the number. The revisions below to the language in existing definition 52.101 (e) and the addition of new definition 52.101 (g) are recommended.

*(e) Toll Free Subscriber. The entity that ~~requests a Responsible Organization to reserve a toll free number from the SMS database~~ has been assigned a number and has the right to choose a RespOrg and to direct all aspects of the use of the number. Additional definitional information can be found in the ATIS Industry Guidelines for Toll Free Number Administration (ATIS-0417001-003).*

*(g) Toll Free Customer. An entity that seeks assignment of a toll free number through the services of a RespOrg, A Toll Free Subscriber, a Toll Free Service Provider, or an Agent of any of these entities. Once a toll free number has been assigned, the Customer becomes the Toll Free Subscriber and is vested with all the Subscriber rights as described in (e) above.*

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##### *Discussion of Definition (8) from CFR 47 Section 52.103 (a).*

The Working Group's analysis included discussion and review of the various status categories as they relate to: (a) the status of the 17,000 numbers that have been set-aside in the new 833 code for possible assignment via a market-based mechanism and (b) the appropriate number status for numbers prior to and following market-based assignments. It was determined that the existing rules can accommodate the movement to a market-based mechanism, but that at least one new status category should be added and that such an addition would be beneficial to both the TFNA and to those seeking to obtain numbers. Discussions around status (8),, Unavailable,, led to that conclusion.

- Under the existing status categories, the 17,000 numbers in 833 are assigned to the unavailable status. When those numbers are made available through an auction or some other market-based mechanism they will remain in unavailable status until assigned to an auction winner or purchaser of the right to use the number by the Toll Free Numbering Administrator. The same would be true of any other numbers that the FCC determines should be made available under rules other than the current first-come, first-served rule. The unavailable status language does not need to be changed if a new "High Value" status is created.

##### *Discussion of the need for a new (10) Status Definition for CFR 47 Section 52.103 (a).*

It was determined that a separate status category for high value numbers should be implemented to apply to numbers (possibly before, during or after assignment) distributed via a market-based mechanism. The Working Group determined that creating a high value status will allow the TFNA to segregate and easily identify numbers that will be assigned through a market-based mechanism and allow numbers that may be assigned via a market-based mechanism in the future to be clearly identified. There was acknowledgement by the Group that there would likely be costs that Somos and others would incur if a new status were added, but that a new status is nevertheless warranted. Due to the on-going Somos platform modernization, Somos could not

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implement a way to mark certain TFNs as high value until, at best, the second half of 2019. Creation of this status in late 2019 should be pursued even if the FCC finds it necessary to go forward with a market-based approach to assignment of the 17,000 presumed high value numbers from the 833 NPA presently tagged with unavailable status in advance of implementation of the high value status code in Somos' platform.

(10) *High Value Status*. Toll free numbers that the FCC has decided to make available for assignment via a market-based mechanism.

#### *Discussion of the need for a new (11) Status Definition for CFR 47 Section 52.103 (a).*

Working through the Section 52.103 (b) rules applicable to the various status categories defined in Section 52.103 (a) definitions the Working Group determined that a definition and rules for numbers in transitional status needed to be codified in Section 52.103 (it already exists in the Somos Guidelines). Unlike the new high value status discussed above, transitional status already exists in practice, but is not reflected in the rules. The recommended change is not specifically premised upon the adoption of a market-based mechanism, but to accommodate the incorporation of the term into a rule that the group is recommending be changed to promote the adoption of the market based mechanism. The Working Group's proposed definition is premised upon that found in the Somos Guidelines.

(11) *Transitional Status*: Toll free numbers that have been disconnected for less than four months, but for which no Exchange Carrier Intercept Recording is being provided. At the end of the four-month period, the toll free number status must be systematically changed to spare.

#### *Discussion of Rule (d) from CFR 47 Section 52.103.*

There are two potential changes recommended to make the existing rule applying to the disconnect status more compatible with a system in which numbers are assigned via a market-

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based mechanism. It is recommended that one of these changes be implemented for consistency purposes irrespective of implementation of a market-based assignment mechanism:

- The existing rule requires all numbers that have been categorized as disconnect to be moved from that status directly into “spare status” once the appropriate aging period has elapsed. A market-based assignment mechanism may require the rule to be adjusted to allow numbers that are selected in the future to be assigned via a market-based mechanism to move from disconnect status into either unavailable status or the recommended new high value status. In developing this recommendation, the Working Group considered a prior FCC request that the TFNA move a large block of numbers from the 800 NPA that were being disconnected into the unavailable status as a group, rather than into spare so that they could be assigned using an allocation mechanism other than first-come first-serve.
- An additional recommendation flowed from varying interpretations of the four month disconnect period referenced in the FCC rule – which has subsequently led to different interpretations and procedures being used by different RespOrgs. The exact language indicates that a toll free number “*shall remain in disconnect status for up to four months.*” A subsequent December 6, 2000 letter from L. Charles Keller of the FCC’s Common Carrier Bureau to Mike Wade of DSMI indicated that the *rule should be read to require that numbers had to remain in disconnect, or a combination of disconnect and transition status, for the full four months* – in other words that the “up to” language was no longer operative. Additionally, the letter clarified that those numbers that have “aged out” can only be changed to spare status. Assignment of numbers via a market-based mechanism is likely to heighten any inequities flowing from those differing interpretations.

It is recommended that the existing rule be changed as follows:

(d) *Disconnect Status.* Toll free numbers ~~may~~ shall remain in disconnect status, or a combination of disconnect and transitional status, for ~~up to~~ four months. No requests for extension of the 4 month disconnect interval shall be granted. All toll free

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numbers in disconnect status must go directly into Spare, Unavailable or High Value status upon expiration of the 4 month disconnect interval. Responsible Organizations shall not retrieve a toll free number from Disconnect or Transitional status and return that number directly to Working status.

#### ***Discussion of Rule (e) from CFR 47 Section 52.103.***

The Working Group evaluated the existing rules applicable to TFNs in suspend status (used for billing disputes) to determine whether those rules should be adjusted to be more compatible with a system in which numbers are assigned via a market-based mechanism. The group anticipates that an auction, or other market-based assignment system, will create many additional disputes among parties vying for particular numbers, and therefore sought a method for handling numbers, and the routing of such numbers, subject to such disputes, pending their resolution. The Working Group considered recommending expanding the types of disputes that could be put in suspend status or creating a new high value dispute status but determined that each of these options had shortcomings.

The problem at hand is that the kinds of disputes that we anticipate may arise following introduction of a market-based assignment mechanism will be different in nature from the billing disputes that presently result in numbers being assigned suspend status. Examples include the challenge of auction or other results, trademark disputes, accusations that the financial incentives arising from the market-based assignment mechanism caused gaming of the system or collusion, etc. Each different kind of dispute will need to be uniquely accommodated. Trademark disputes for example can only be resolved by the legal system (either by settlement agreements or adjudication) and this process can take years to resolve.

Rather than changing the suspend status rules or introducing a new status category the Working Group recommends continuation of the existing treatment of toll free numbers often used in cases of trademark disputes etc. That is, TFNs that are the subject of a dispute arising from a market-based assignment mechanism should be put into unavailable status and flagged by assigning them to a unique Help Desk RespOrg code. Such treatment will not impose a time

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limit that the TFNA, RespOrg, or even the party ultimately assigned the TFN (the toll free subscriber) through a market-based mechanism cannot control. It will also allow the routing of calls to a TFN in dispute to be changed in accordance with requests from the FCC or court orders (potentially staying the transfer of a number to a particular toll free subscriber, or in some other manner requiring unique routing that may change during the timespan until the dispute is resolved). This treatment would be best codified within the FCC rules, but the Working Group has not recommended either the specific language for, or placement of a such a rule.

#### ***Discussion of Rule (f)(1) from CFR 47 Section 52.103.***

The Working Group identified and recommends two separate changes to the rules applicable to numbers that have been designated as unavailable: One, to make the rule more compatible with a system in which numbers are assigned via a market-based mechanism, and the other to correct an incorrect reference to “DSMI” (which no longer exists).

- The rule as currently written allows only RespOrgs to request that numbers be put into unavailable status. While not specifically allowed by the rules, the FCC also may request, and has requested, that numbers be classified as unavailable – and the need for the FCC to do so is something that may become even more necessary in the future.
- References to DSMI need to be replaced with Toll Free Numbering Administrator (TFNA).
- The Working Group recommends incorporating “or by the FCC” at the end of the first sentence of this rule.

The recommended changes to the exiting rule are as follows:

- (1) Written requests to make a specific toll free number unavailable must be submitted to ~~DSMI~~ the Toll Free Numbering Administrator by the Responsible Organization managing the records of the toll free number or by the FCC. The request shall include the appropriate documentation of the reason for the request. ~~DSMI~~ The Toll Free Numbering Administrator is the only entity that can assign this status to or remove this status from a number. Responsible Organizations that have a toll free subscriber

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with special circumstances requiring that a toll free number be designated for that particular subscriber far in advance of its actual usage may request that ~~DSM~~ the Toll Free Numbering Administrator place such a number in unavailable status.

#### Discussion of entirety of rules in CFR 47 Section 52.105

The Working Group evaluated the existing warehousing rules: how those rules work in the current environment, the lack of enforcement of those rules by the FCC in current environment, and what differences might exist in an environment where numbers are assigned through a market-based mechanism. The Working Group does not recommend the elimination of, or any changes to, the existing warehousing rules to accommodate or facilitate the implementation of a market-based assignment mechanism. The Working Group is recommending that the existing warehousing rule be supplemented with constraints incorporated into whatever rules the FCC develops to govern the function of an auction / market-based assignment mechanism. Such constraints must prohibit conflicts of interest (to keep a particular RespOrg or Agent from obtaining a number for themselves instead of for a customer that has requested it) and collusion (multiple RespOrgs or other parties agreeing to game the market-based assignment mechanism to the detriment of either the auction proceeds, customers or other RespOrgs).

- Evaluation of this issue included acknowledgement that the warehousing rule was likely designed to discourage depletion of toll free numbers and to ensure that TFNs were available and that the FCC has not enforced the warehousing rules.
- The Group also discussed that in addition to any on-going illegal warehousing the existing rules can be and are circumvented by RespOrgs who may also be toll free subscribers.
- Conflicts of interest between RespOrgs and their customers can arise when the RespOrg has its own financial interest in acquiring and warehousing high value numbers. Allowing warehousing might incent RespOrgs, who under the rules are to act as the agent of



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customers in the assignment and management of toll free numbers in the SMS/800 database to act in pursuit of their own interests to the detriment of a Customer.

- The Working Group also considered whether revision or elimination of the warehousing rules in conjunction with FCC movement to the assignment of numbers using a market-based system would maximize auction proceeds, and whether maximizing profits should even be a goal.
- Consideration was also given to the concern that elimination of the warehousing rules would allow RespOrgs and other participants with deep pockets to buy up all the toll free numbers, leaving few, if any high value (or even regular) numbers for other participants, thereby creating an unfair and inequitable playing field and hastening number exhaust.
- There was also consideration of the impact and costs that may be faced by participants with limited resources; as their ability to obtain high value numbers may become extremely limited. The FCC has acknowledged the possibility of this outcome in its Spectrum Auction rules. It should consider this in whatever market-based assignment or auction rules it implements.

#### ***Discussion of entirety of rules in CFR 47 Section 52.107***

The Working Group evaluated the existing hoarding and brokering rules: how those rules work in the current environment, the lack of enforcement of those rules by the FCC in the current environment, and what differences might exist in an environment where numbers are assigned through a market-based mechanism. The Working Group does not recommend elimination of, or any changes to, the existing hoarding or brokering rule to accommodate or facilitate the implementation of market-based assignment mechanism. The Working Group is instead recommending that the existing hoarding and brokering rules be enforced and that enhancements to those rules be incorporated into whatever rules the FCC develops to govern the function of an auction / market-based assignment mechanism.

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##### *Discussion of entirety of rules from CFR 47 Section 52.109.*

The Working Group considered the existing permanent cap on number reservations and how the rules have been used to date. The Working Group recommends no changes to the first two sections that specify limits on reservations tied to a RespOrgs total working numbers and the number of system-wide numbers in spare. The Working Group considered recommending revisions to the third section of rule but determined that as written the rule already allows the FCC to modify the parameters of the limits when exigent circumstances make such action necessary.

- While the FCC modified the parameters in specific situations in the past there is concern that a movement to a market-based assignment mechanism may result in more frequent situations in which the current limits are too high or too low – but it is impossible at this time to know how those limits should be adjusted. The Working Group recommends that the FCC proactively monitor this situation and be ready to make either individual changes or to change the current limits in the rules if the incentives inherent in a market-base assignment mechanism results in a run on toll free numbers.

## **Conclusion**

The rule changes recommended above reflect the Working Group’s response to the request for it to identify whether the FCC should “revise any of its other current rules (such as the general definitions, lag times, or caps on toll free number reservations)” In addition to the rule revisions recommended here, the Working Group strongly recommends that in developing the rules for an auction or other market-based assignment the FCC implement rules and protections to ensure that the new mechanism does not preclude some participants from obtaining TFNs. It also recommends that rules specifying the working of any new market-based TFN assignment methodology include strong and well-developed prohibitions to protect against conflicts of interest and collusion.

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The TFAM Working Group members believe that the present first-come first-served assignment mechanism works well and that there are potential risks to the fair, efficient and non-discriminatory assignment of toll free numbers associated with replacing or supplementing it with a market-based assignment mechanism even with the rule changes recommended above. Those risks include the potential for it to benefit speculators and those with deep pockets to the detriment of others, to cause a spike in disputes among the parties seeking TFNs, and to hasten TFN exhaust.

The TFAM Working Group also notes that its review revealed inconsistency in the definitions of terms between the glossary sections of the FCC Rules, the Somos Tariff, and the ATIS Guidelines. It is our recommendation that an effort be undertaken by the FCC, ATIS and Somos to eliminate any contradictions and bring the definitions into alignment.



NANC TOLL FREE ASSIGNMENT MODERNIZATION WORKING GROUP

# Appendix B

*Report regarding second referral question: Recommendations relative to a secondary market for toll free numbers*

***Appendix B***

***NANC TFAM Working Group Report regarding second referral question:***

***Recommendation relative to a secondary market for toll free numbers***

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### ***NANC TFAM Working Group Report regarding second referral question: Recommendation relative to a secondary market for toll free numbers***

## **Results of Deliberation on the Second Referral Question from the FCC: Recommendations relative to a secondary market for toll free numbers**

The Federal Communications Commission (FCC) in its December 7, 2017, letter directed the North American Numbering Council (NANC), via its Toll Free Numbering Modernization Issues Working Group (TFN Working Group) to address three questions regarding its Toll Free Assignment Modernization Notice of Proposed Rulemaking (TFAM NPRM) on modernizing toll free number assignments to better promote the equitable and efficient use of toll free numbers. This report section addresses the second of those questions, which is:

*Should the Commission revise its current rules (including the hoarding and brokering rules) to promote development of a secondary market for toll free numbers? What are the implications of those rule revisions?*

To answer this question the TFN Working Group held several conference calls and smaller breakout group meetings to discuss what changes would need to be made to the FCC's rules to promote a secondary market for toll free numbers and the implications of those revisions. To guide its discussion the TFN Working Group referred to the specific questions and requests for comment posed in the TFAM NPRM relating to the promotion of a secondary market for toll free numbers. The Working Group acknowledges that minor revisions to the FCC's brokering rule would be beneficial in (1) allowing toll free number Subscribers to transfer their rights to use a toll free number when that Subscriber sells business assets associated with its toll free number; (2) if the toll free number is mistakenly returned to the spare pool and picked up by another carrier; (3) to correct a fraudulent or unauthorized transfer of a toll free number or inadvertent transfer of a Shared Use number. However, the TFN Working Group recommends that the FCC's current rules be maintained in a substantially similar form and effect because they continue to play an important role in the equitable and efficient use of toll free numbers as discussed further below.

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#### **Public Resource Precedent**

While the sale of toll free numbers from one Subscriber to another was legal for the first 30 years of the Toll Free Numbering Administration's (TFNA) existence, rescinding the brokering, hoarding, and warehousing rules would reverse the last 20 years of FCC legal precedent. In its 1997 Order, the FCC found that "'hoarding' and 'brokering' of toll free numbers are contrary to the public interest and thus subject to sanction by the Commission." *In the Matter of Toll Free Serv. Access Codes*, 12 F.C.C. Rcd. 11162, 11164 (F.C.C. 1997).<sup>1</sup> The FCC found in its 1997 Order that the hoarding of toll free numbers exacerbates toll free number depletion and necessitates the opening of additional toll free relief codes earlier than would be necessary otherwise. *Id.* at 11189. The FCC also found that it is time consuming and costly for the industry to perform the necessary modifications to the network so that it can support calls using a new code. *Id.* Additionally, brokering provides motivation for hoarding and therefore results in quicker exhaustion of a current toll free code and interferes with the orderly allocation of numbering resources. *Id.* The FCC reaffirmed its rules with respect to brokering, hoarding, and warehousing toll free numbers in 2007 finding that the public interest concerns identified by the FCC in its 1997 order still exist and that these practices would hasten the depletion of particular toll free number codes. *In the Matter of Toll Free Serv. Access Codes*, 22 F.C.C. Rcd. 22188, 22191 (F.C.C. 2007). Based on the limited information contained in the FCC's TFAM NPRM the working group believes it is highly likely that a repeal of these rules will be challenged as arbitrary and inconsistent with its statutory mandate to promote the equitable and efficient use of toll free numbers.

In June of 1995, only 600,000 of the original 8 million 800 toll free numbers were unreserved or unassigned. *Id.* at 11169. The weekly assignment of 800 numbers was three times the rate projected by the industry less than one year earlier. *Id.* If consumption had continued at that pace, the toll free number database would have been depleted of unassigned numbers in July

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<sup>1</sup> Hoarding occurs when a toll free subscriber acquires more numbers from a RespOrg than it intends to use for the provision of toll free service. Brokering is the buying or selling of numbers.



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1995; however, the industry estimated that it could not modify the local exchange networks for use and portability of 888 toll free numbers until April 1, 1996. *Id* at 11170. While the FCC took a number of other steps to avoid the depletion of the 800 toll free numbers, the adoption of its hoarding, brokering, and warehousing rules were primarily driven by these events. It took nearly 30 years for the first 8 million toll free numbers to be assigned; however today there are over 41 million toll free numbers in use. The lack of a lawful secondary market does not seem to have reduced the demand for new toll free numbers.

#### **Transaction Proceeds**

The TFAM NPRM sought comment on whether the TFNA and or RespOrgs should receive any transaction proceeds or charge any fees to offset number administration costs if a lawful secondary market were created. However, according to the FCC's own legal analysis the toll free number administrator does not have the legal authority to assess fees above the cost of administering a particular service associated with the TFNA. It is the working groups understanding that there is very little cost to a RespOrg and no cost to Somos, the toll free number administrator, when a toll free number is being rerouted to a new Subscriber, so the amount of revenue that could be generated would be nominal to none if the TFNA assessed a transaction fee under a lawful secondary market.

Currently the only way to know if a Subscriber has sold the rights to a toll free number to another entity is to include Subscriber information in the SMS/800 database. However, suggestions to include this information in the SMS/800 database have been highly resisted by RespOrgs because it would be very costly and time consuming to develop. Additionally, many if not all RespOrgs consider their Subscriber information to be proprietary information and to disclose that information to other RespOrgs would be financially harmful. As a result, a Subscriber can sell a toll free number despite the FCC's anti-brokering regulations undetected by the RespOrgs and/or Somos; therefore, it is practically impossible to assess a fee for selling the rights to a toll free number. One alternative to including Subscriber information in the SMS/800 database that was discussed by the Group was to create digital certificate for each Subscriber that could be included in the SMS/800 database and transferred to a new Subscriber if the rights to use a toll free number were sold after a notice of sale was filed with the appropriate RespOrg.

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However, creating a certificate system would increase administration costs for Somos, the TFNA, as well as RespOrgs.

Similar concerns would arise if a RespOrg were allowed to charge a fee when a Subscriber sold the rights to use a toll free number in a lawful secondary market. It would be practically impossible for a RespOrg to impose a fee because RespOrgs do not know when a Subscriber is selling the rights to a toll free number unless the Subscriber voluntarily discloses the information. It would be financially impractical for a RespOrg to verify whether a sale had occurred each time it received a rerouting or new service request. If RespOrgs were to verify whether or not a sale of a toll free number had occurred each time it received a rerouting or new service request the additional administrative costs would most likely be passed through to end users. While RespOrgs currently can charge whatever they want for their toll free number services, allowing RespOrgs to receive a portion of transaction proceeds or charge any fees to offset number administration costs in a lawful secondary market would likely drive entities wanting to sell the rights to a toll free number to the unlawful secondary market in order to avoid these increased transaction costs. Unless the FCC's Enforcement Division seeks penalties from those Subscribers selling toll free numbers in the unlawful secondary market there will be little to no incentive to pay a transaction fee to the TFNA or RespOrgs in a lawful secondary market.

The working group is concerned that creating a lawful secondary market with no regulation could allow one or a few entities with significant resources to control the market of toll free numbers, resulting in small businesses and others with more limited resources to pay a premium for toll free numbers. This would result in an inefficient and inequitable market and exhausting the pool of available toll free numbers quicker than without a lawful secondary market. Alternatively, the costs of regulating a lawful secondary market, which imposes fees on sales of toll free numbers from one Subscriber to another may outweigh the perceived benefits of creating such a market. Additional concerns would arise if RespOrgs are required to be the primary policing agent of a lawful secondary market. Verifying that unlawful sales had not occurred would increase RespOrg administrative costs and could open RespOrgs up to additional liability if an unlawful sale went undetected.

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#### **Trademark Disputes**

The NPRM also sought comment on whether a lawful secondary market would have any impact on settling trademark or branding disputes in desirable toll free numbers. A majority of the Group agrees that the creation of a lawful secondary market would have no positive impact on settling trademark or branding disputes and if anything could make trademark and branding disputes more complicated. The only reference to any trademark related to a toll free number mentioned in the NPRM is the reference to *In The Matter Of Richard Jackowitz IT Connet, Inc.*, where Mr. Jackowitz and IT Connect violated the FCC's toll free numbering rules by offering to sell Bristol-Myers Squibb Company (BMS) various vanity toll free numbers containing “trademarks owned by BMS or its partners.”, 28 F.C.C. Rcd. 6692, 6693 (F.C.C. 2013). The only apparent benefit of a lawful secondary market in this case would be that Mr. Jackowitz and IT Connect’s offer to sell various vanity toll free numbers containing trademarks owned by BMS or its partners would have been lawful.

The Working Group is also aware that in 2007, several petitioners argued that the FCC should reinstate the right of first refusal early reservation plan because the first-come, first-served reservation policy harms investment made by incumbent Subscribers and creates confusion for consumers, and that trademark law may insufficiently protect incumbent Subscribers. *In the Matter of Toll Free Serv. Access Codes*, 22 F.C.C. Rcd. 22188, 22191 (F.C.C. 2007) However, the FCC declined to modify its first-come, first-served reservation policy stating, “Unlike the first-come, first-served method for allocating toll free numbers, a right of first refusal policy still raises concerns about efficiency and unreasonable discrimination because incumbent Subscribers would have the incentive to hoard the same seven-digit number in newly released SACs in order to keep potential subscribers/competitors at bay.” *Id.*

One group member also raised the concern that RespOrgs are ill equipped to police trademark or branding disputes regarding toll free numbers. A majority of the Group agreed that the current process for handling trademark and branding disputes is sufficient and that it would be inappropriate for RespOrgs and/or Somos to police trademark and branding issues regarding toll free numbers.

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#### Brokering Rule

The TFAM also sought comment on whether the brokering rule should be eliminated since it directly precludes a secondary market for toll free numbers or, alternatively, whether the FCC should relax or suspend the brokering rule in any way. A majority of the Group agrees that the brokering rule should not be eliminated as it still plays an important role in reducing the exhaustion of available toll free numbers, which is critical to the FCC's statutory mandate to efficiently and equitably administer the TFNA. However, a majority of the Group agrees that the brokering rule should be modified to allow the lawful transfer of a number from one Subscriber to another when a Subscriber is selling other business assets for which it uses the toll free number. Under the current rules the toll free number associated with a business should go back to the pool of available toll free numbers when there is a sale of business assets; however, it is the Groups understanding that there are unlawful ways around this requirement. To effectuate this change, the Group proposes the following additional language in subsection (2) and a new subsection (4) of §52.107(a), appear in bold face text:

#### §52.107 Hoarding.

(a) As used in this section, hoarding is the acquisition by a toll free subscriber from a Responsible Organization of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service. The definition of hoarding also includes number brokering, which is the selling of a toll free number by a private entity for a fee.

(1) Toll free subscribers shall not hoard toll free numbers.

(2) **Except as described in subsection (4),** no person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee.

(3) Routing multiple toll free numbers to a single toll free subscriber will create a rebuttable presumption that the toll free subscriber is hoarding or brokering toll free numbers.

**(4) A toll free subscriber may transfer the rights to use a toll free number to another person or entity (a) when the toll free subscriber is selling other business assets associated with the use of the toll free number to the same person or entity, (b) if the free number is mistakenly returned to the spare pool and picked up by another**

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**carrier or (c) to correct a fraudulent or unauthorized transfer of a toll free number or inadvertent transfer of a shared use number.**

One group member commented that restricting the lawful resale options for a toll free number to only one or two types of transactions could impact the prices offered for mutually exclusive numbers if the FCC adopts an auction for the assignment of new toll free number codes. Another group member stated that the primary value a bidder should consider in what price to offer for a toll free number in an auction scenario should be the value of that number for the bidder's own use, not its potential resale value.

The Group also notes that with any relaxation of any rule there will be actors that will seek to find ways to manipulate the system; however, noncompliance with a rule or set of rules is not a justification for eliminating rules. While a majority of violations of the brokering rule may not create a situation of public detriment, having rules in place can be beneficial when a situation of public harm or pervasive rule violation occurs such as the *In The Matter Of Richard Jackowitz IT Connect, Inc.*, described above.

#### **Warehousing & Hoarding Rules**

A majority of the Group agreed that toll free number exhaustion would be even quicker if the warehousing and/or hoarding rules were eliminated because it would allow a few entities with substantial resources to buy up all the unassigned toll free numbers. Additionally, without these provisions there would be no requirement to return a toll free number that is no longer being used to the pool of available numbers. Since the cost of maintaining a toll free number is approximately \$1.50 per year a Subscriber or RespOrg could hoard or warehouse a number indefinitely. For these reasons it is the Group's recommendation that the warehousing and hoarding rules be retained.

A majority of the group believes that if the warehousing and/or hoarding rules are eliminated RespOrgs and Subscribers will hold on to numbers they no longer need, hoping to sell them later at higher prices because it is very inexpensive to maintain a toll free number. A majority of the group believes that if the FCC eliminates the warehousing and/or hoarding rules then a rule limiting the amount of time a RespOrg or Subscriber may hold on to a toll free

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number without using it or selling it would be appropriate to encourage number conservation. It is the groups understanding that the term “in use” in the industry generally refers to a number that is in “assigned status” or “working status” as those terms are defined in the FCC’s rules. Because the Group is recommending that the warehousing and hoarding rules be maintained we do not have a specific recommendation on the time limit that a Subscriber should be allowed to hold a number that is not in use. If the FCC eliminates the warehousing and hoarding rules, we believe they should retain the 45-day reserve lag time rule in 53.103(b). However, the Group would point out that under the current rules there are ways for bad actors to manipulate the status of a toll free number to avoid the number going back to the pool of available numbers. Somos performs automatic sweeps of toll free numbers, which collect several hundred to a thousand numbers at a time, which have exceeded time limitations in the rules for those Subscribers and RespOrgs that choose to follow the rules.

The TFAM NPRM also asked for comment on whether administrative fees should be increased on RespOrgs to decrease the amount of time a number is held. As noted earlier it is currently very inexpensive to maintain a toll free number. While increasing administrative fees on RespOrgs may have some effect on how long a number is held, the challenge is that Somos has a cost based tariff, so unless Somos significantly increases its costs it would not be possible to increase administrative fees on RespOrgs. It is the Groups understanding that approximately 25 percent of toll free numbers are assigned to RespOrgs *as the Subscriber* for use in analytics and advertising, so while a majority of any increase in administrative fees would most likely be passed on to Subscribers some of the costs would be absorbed by RespOrgs.

However, the Group would note that enforcement and rulemaking costs are collected through the annual assessment imposed by the FCC, not through administrative fees charged by Somos. If enforcement of current or new rules is a concern, then increasing the annual assessment would be the appropriate place to increase fees. Currently, the FCC only assesses its \$0.12 annual charge per toll free number to those larger RespOrgs who have 4,166 or more (an annual bill of \$500 or more) toll free numbers assigned to them. Approximately 270 RespOrgs out of 470 have more than 4,000 toll free numbers each. Increasing the annual assessment could achieve both the goal of limiting the amount of time a number is held and increase the

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enforcement budget allowing the FCC to bring more enforcement actions against those entities breaking its rules, which was discussed in the TFAM NPRM.

#### **Other Rule Revisions**

The TFAM NPRM asked whether the FCC should revise the definition of the Service Management System (SMS) Database in section 52.101(d) to include Subscriber information. A majority of the Group recommends that the definition of the SMS Database not include Subscriber information because of concerns expressed by RespOrgs that Subscriber information is proprietary information and that it would be time consuming to initially input Subscriber information and keep that information current. Keeping Subscriber information current would also increase administrative costs to RespOrgs. One Group member suggested that rather than having Subscriber information in the SMS Database that each Subscriber could have a unique certificate/account number that would be associated with each toll free number assigned to that Subscriber in the SMS database. The certificate/account number could be changed or removed when a toll free number is sold to a new Subscriber or when a toll free number goes back into the pool of available numbers. While this approach may alleviate RespOrgs proprietary information concerns it would not address the time and cost of creating and maintaining this new information in the SMS Database.

It is the Groups understanding that there are different levels of visibility within the SMS database. Non-proprietary information which is visible to all RespOrgs, only includes the toll free number, number status, RespOrg name, and the RespOrg helpline phone number. All other information is proprietary information and is therefore only visible to Somos and the RespOrg who manages the specific toll free number. An example of proprietary information already in the SMS Database is the routing information associated with a toll free number. Routing information is proprietary because a competing RespOrg could duplicate another RespOrgs least cost route, eliminating its competitive advantage. Clarification may be needed on which level of visibility Subscriber information would have in the SMS database. If Subscriber information had the same safeguards as proprietary information already in the SMS database there may be less resistance to its inclusion by RespOrgs. It is the Groups understanding that some RespOrgs only lease the right to use a toll free number to an end user. In this case the Subscriber of record would be the

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RespOrg and the end user's information would still not be in the SMS Database if the definition were changed as proposed. Other RespOrgs may also adopt this business model to avoid having to provide subscriber information for its individual end users if the proposed rule change is adopted.

Section 52.103 of the rules contains a number of definitions and rules pertaining to the "status" of toll free numbers in the database and when these numbers are available for assignment. The TFAM NPRM asked what revisions, if any, to these categories should be considered to promote a secondary market. The majority of the Group does not recommend any changes to the definitions and rules pertaining to the status of a toll free number as they are generally sufficient in managing the use of toll free numbers. The Group notes that there are ways to manipulate the status of a number to keep that number from going back to the pool of available numbers, but the Group has no specific recommendations on how to avoid this from happening. If the FCC decides to create a lawful secondary market then the Group would advise that new fields be created in the SMS database to indicate that a number is available for sale and, if sold, the date of the sale and the sale price.

## **Conclusion**

The Working Group acknowledges that minor revisions to the FCC's brokering rule would be beneficial in (1) allowing toll free number Subscribers to transfer their rights to use a toll free number when that Subscriber sells business assets associated with its toll free number; (2) if the toll free number is mistakenly returned to the spare pool and picked up by another carrier; (3) to correct a fraudulent or unauthorized transfer of a toll free number or inadvertent transfer of a Shared Use number. However, the TFN Working Group recommends that the FCC's current rules be maintained in a substantially similar form and effect because they continue to play an important role in the equitable and efficient use of toll free numbers.



NANC TOLL FREE ASSIGNMENT MODERNIZATION WORKING GROUP

# Appendix C

*Report regarding third referral question: Set-aside of toll free numbers for Government or public interest use*

***Appendix C***

***NANC TFAM Working Group Report regarding third referral question:***

***Set-aside of toll free numbers for Government or public interest use***

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### *NANC TFAM Working Group Report regarding third referral question:*

#### *Set-aside of toll free numbers for Government or public interest use*

## Results of Deliberation on the Third Referral Question from the FCC: Set-aside of toll free numbers for Government or public interest use

The Federal Communications Commission (FCC) in its December 7, 2017 letter directed the North American Numbering Council (NANC), via its Toll Free Numbering Modernization Issues Working Group (TFN Working Group) to address three questions regarding its Toll Free Assignment Modernization Notice of Proposed Rulemaking (TFAM NPRM) on modernizing toll free number assignments to better promote the equitable and efficient use of toll

free numbers. This report section addresses the third of those questions, which is:

*“Should the Commission set aside certain desirable toll free numbers for use, without cost, by government or non-profit health, safety, education, or other public interest organizations? If so, how should this number set aside system be structured and what should be the roles, if any, of the Commission and the Toll Free Number Administrator? What are the implications of the Commission setting aside certain numbers for these purposes?”*

To answer these questions the TFN Working Group (WG) held several conference calls and smaller breakout group meetings to discuss whether and what changes would need to be made to the Commission’s rules to address the free use of toll free numbers by government or non-profit health, safety, education, or public interest organizations and the implications of those revisions.

Based on the historical data gathered by the WG, and its further fact findings and deliberations, the WG **does not** feel that the Commission should set aside certain desirable toll free numbers for use, without cost, by government or other public interest organizations primarily for the following reasons:

- **Infrequency** of historical need for Commission action regarding toll free numbers for public interest purposes.

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- Determining a number's **“desirability”** is **generally ambiguous** and difficult.
- **Determining qualifying organizational eligibility is difficult** and will likely require Commission review and approval on a case by case basis, and place undue process burden on the Commission.
- Availability of obtaining a toll free number has not been shown to be **cost prohibitive** today.

#### **Infrequency of historical actions taken by Commission**

The WG knows of only three times the Commission has intervened on behalf of a non-profit or government user in the assignment of a toll free number (TFN). Each intervention had unique circumstances and overwhelming public interest.

#### 1-800-RED-CROSS

In 2005, in the wake of Hurricane Katrina, the American Red Cross, National Chapter sought the reassignment of 1-800-RED-CROSS (1-800-733-2767) from an existing user, 1-800-IDEAS.Com. The Red Cross was instrumental in providing disaster relief to the victims of Hurricane Katrina. In order to help coordinate disaster recovery and donations, the American Red Cross filed an emergency petition at the Commission requesting that 1-800-733-2767 be assigned to them. The number had been in used by 1-800-IDEAS.Com since the 1980s and had, through a shared use arrangement, been used by four local Red Cross chapters.

The Commission granted the National Red Cross's emergency petition to reassign the number to the National Red Cross on a temporary basis. The Red Cross was to reimburse 1-800-IDEAS.Com for their expenses in giving up this TFN. A year later, over 1-800-IDEAS.Com's objection, the Commission permanently reassigned 1-800-733-2767 to the National Chapter of the Red Cross. The number is currently in use by the American Red Cross.

#### 1-800-SUICIDE

In 2007, the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), requested the Commission reassign

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three toll free numbers, 1-800-784-2433 (1-800-SUICIDE), 1-877-784-2432 (1-877-SUICIDA), and 1-888-784-2433 (1-888-SUICIDE) from the Kristin Brooks Hope Center (KBHC) to SAMHSA. KBHC is a non-profit that operated suicide hotlines starting in 1998.

KBHC experienced some financial difficulties and SAMHSA expressed concern that, should KBHC not be able to pay their bills, the TFNs at issue would be disconnected and sent to the spare pool. In order to avoid a possible public health crisis, SAMHSA petitioned the Commission to reassign the TFNs from KBHC to SAMHSA. The Commission agreed with SAMHSA that KBHC's financial position made it possible that the TFNs would end up in the spare pool, which would disconnect the TFNs service to KBHC, and calls to those TFNs would not be delivered to crisis counselors, putting lives in possible danger. The Commission granted a temporary reassignment of the TFN. Later in 2007, SAMHSA petition the Commission for permanent assignment of the numbers. The numbers remained assigned to SAMHSA on temporary basis until 2012. After several appeals and litigation and finally agreement by KBHC, the Commission granted permanent reassignment.

#### **800-US-REWARD**

Shortly after the 9/11 attacks on the U.S., the State Department began using 800-US-REWARD as the primary means of communications for its terrorism tip line, called Rewards for Justice (RFJ). The RespOrg for that number, TellNet, was the subscriber of record for that TFN, and TellNet permitted the RFJ program to use that TFN starting in 2002.

TellNet was exiting the RespOrg business and was willing to transfer the number to the State Department. Commission rules, however, forbid such a transfer. The State Department filed a petition asking the Commission to permanently reassign the number to the State Department. The State Department argued that for 15 years it has publicized the availability of this RFJ tip line. Replacing the TFN would jeopardize the program's utility and possibly cause harm to life and property. TellNet did not oppose the request. The Commission agreed and permanently reassigned 800-US-REWARD to the State Department.

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Evidence suggests that there is insufficient demand to justify a change in rules to set aside “desirable” toll free numbers for the public good. Additionally, as the three aforementioned examples indicate, all issues occurred *post* number assignment, i.e., where much of the toll free numbers’ “desirable” value was established in its use in the market. Therefore, it is not obvious that new rules for setting aside “desirable” numbers prior to their initial assignment will make the assignment of public interest or government TFNs more efficient, or otherwise further the goals of the Commission.

#### **Determining a toll free number’s “desirability” is generally ambiguous**

Toll free numbers are generally viewed to be uniquely “desirable” largely in two ways. Some numbers are deemed “repeaters” where they have a memorable series of numbers such as 555-5555, or 212-1212. Alternatively, some “desirable” numbers can be considered “vanity” numbers. A “vanity” number, as defined on the Commission’s website, is a toll free telephone number that spells a name, word or acronym chosen by the subscriber, such as 1-800-FLOWERS or 1-888-NEW-CARS. For the purposes of this WG’s review of a number’s “desirability” to government or public interest groups, it looked solely at the “vanity” number case.

Based upon historical evidence, where “desirable” vanity numbers were re-assigned for public interest purposes, each case was done after the original assignment of the TFN and after that TFN had established its uniqueness, memorability, or notoriety. Simply put, the reason these numbers were “desirable” was because they were either already well-established in the consumers mind for the public interest purpose, or they could be based upon their chosen word or acronym matching that of the public interest cause. Therefore, the issue of “desirability” is something that would be very difficult to ascertain prior to assignment. The degree of desirability would only become apparent after assignment to and investment by the Subscriber in building awareness in the public. Therefore, providing an ability to reserve potentially desirable numbers prior to their assignment is at best an incomplete solution, and will continue to result in some numbers becoming desirable for this public interest purpose after assignment, and subject to secondary market conditions, rules, and costs.

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Determining the eligibility of public interest organizations is onerous and remains subject to conflicts requiring resolution

Developing the evaluation criteria for an organization to be deemed in the “public interest”, along with the process by which that organization would be determined to be eligible for this type of preferential treatment, is expected to be overly complex and arduous. This is true not only in determining the eligibility of select divisions of the government, but also other non-profit health, safety, education, or other public interest organizations. The United States currently has over 1.5 million registered 501(c)(3) charities alone, and many more organizations serving the public interest. Each of these organizations would likely expect to be eligible for this benefit. In the event of conflict, including a situation where multiple qualified organizations desire the same number, someone would need to determine which was the worthier public interest cause, or use some other means to settle such conflicts. This could require potentially subjective judgments on an organization’s relative public interest worthiness. Additionally, the potential for conflicts exists between qualified government agencies at the federal and state level. Additionally, history dictates that public interest conflicts can be very contentious, protracted, and subject to appeal and lengthy legal action.

Finally, given its authority over numbering, “public interest” determinations such as the ones needed if the Commission would require TFN set asides, should be decided by the Commission. If, however, the Commission found that the administration of this authority and process could be delegated to another party, the industry would likely incur additional costs to support any “set aside” process.

#### **Alternative options**

Although there is limited historical evidence to support set-asides, along with the numerous challenges in determining a number’s “desirability”, the WG did identify a potential option should the Commission disagree.

Today, the 555 exchange is closed in every toll free NPA other than 800. Each of those exchanges has 10,000 numbers in it. The Commission could order that one or more of those

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exchanges be opened for government or other public interest use. While not in favor of any set asides, the WG believes this may be a more viable approach than trying to determine criteria for what numbers might be “desirable”.

For example, organizations such as the United States Postal Service could establish 1-855-555-USPS and not have to compete in an auction or secondary marketplace to reserve this number in support of their service and its public interest mission. This may also prevent the Commission and/or public interest organizations from incurring additional expenses represented by being an equal party bidder in an auction or via litigation to obtain the number as has historically been needed. It should be noted that while this is a viable option in addressing non-cost prohibitive numbers for these purposes (e.g. public interest), such an option does not address the previously-stated concerns as to who would qualify for these numbers as being defined as a public interest organization.



NANC TOLL FREE ASSIGNMENT MODERNIZATION WORKING GROUP

# Appendix D

***Recommended Changes to CFR 47 § 52.101 to § 52.111***



## CODE OF FEDERAL REGULATIONS

Title 47: Telecommunication  
PART 52—NUMBERING

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### Subpart D—Toll Free Numbers

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#### Contents

§52.101 General definitions.  
§52.103 Lag times.  
§52.105 Warehousing.  
§52.107 Hoarding.  
§52.109 Permanent cap on number reservations.  
§52.111 Toll free number assignment.  
Appendix to Part 52—Deployment Schedule for Long-Term Database Methods for Local Number Portability

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#### §52.101 General definitions.

As used in this part:

(a) ~~Number Administration and Service Center (“NASC”~~ *Toll Free Numbering Administrator (TFNA)* ). The entity appointed by the FCC under its authority pursuant to 47 U.S.C § 251(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.

(b) *Responsible Organization (“RespOrg”)*. The entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber. RespOrgs may, but are not required to, act as agents for customers interested in obtaining numbers through the market-based mechanism.

(c) *Service Control Points*. The regional databases in the toll free network.

(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.

(e) *Toll Free Subscriber*. The entity that has been assigned a number and has the right to choose a Resp Org and to direct all aspects of the use of the number, that requests a Responsible Organization to reserve a toll free number from the SMS database. Additional definitional information can be found in the ATIS Industry Guidelines for Toll-Free Number Administration (ATIS-0417001-003).

(f) *Toll Free Number*. A telephone number for which the toll charges for completed calls are paid by the toll free subscriber. The toll free subscriber's specific geographic location has no bearing on what toll free number it can obtain from the SMS database.

(g) *Toll Free Customer*. An entity that seeks direct assignment or use of a Toll-Free number through the services of a Resp Org, A Toll-Free Subscriber, a Toll-Free Service Provider, or an Agent of any of these entities. Once a Toll-Free number has been assigned, the Customer becomes the Toll Free Subscriber and is vested with all the Subscriber rights as described in (e) above.

**§52.103 Lag times.**

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Assigned Status.* A toll free number record that has specific subscriber routing information entered by the Responsible Organization in the Service Management System database and is pending activation in the Service Control Points.

(2) *Disconnect Status.* The toll free number has been discontinued and an exchange carrier intercept recording is being provided.

(3) *Lag Time.* The interval between a toll free number's reservation in the Service Management System database and its conversion to working status, as well as the period of time between disconnection or cancellation of a toll free number and the point at which that toll free number may be reassigned to another toll free subscriber.

(4) *Reserved Status.* The toll free number has been reserved from the Service Management System database by a Responsible Organization for a toll free subscriber.

(5) *Seasonal Numbers.* Toll free numbers held by toll free subscribers who do not have a year-round need for a toll free number.

(6) *Spare Status.* The toll free number is available for assignment by a Responsible Organization.

(7) *Suspend Status.* The toll free service has been temporarily disconnected and is scheduled to be reactivated.

(8) *Unavailable Status.* The toll free number is not available for assignment due to an unusual condition.

(9) *Working Status.* The toll free number is loaded in the Service Control Points and is being utilized to complete toll free service calls.

(10) *High Value Status.* Toll free numbers that the FCC has decided to make available for assignment via a market-based mechanism.

(11) *Transitional Status.* Toll-Free numbers that have been disconnected for less than four months, but for which no Exchange Carrier Intercept Recording is being provided.

(b) *Reserved Status.* Toll free numbers may remain in reserved status for up to 45 days. There shall be no extension of the reservation period after expiration of the initial 45-day interval.

(c) *Assigned Status.* Toll free numbers may remain in assigned status until changed to working status or for a maximum of 6 months, whichever occurs first. Toll free numbers that, because of special circumstances, require that they be designated for a particular subscriber far in advance of their actual usage shall not be placed in assigned status, but instead shall be placed in unavailable status.

(d) *Disconnect Status.* Toll free numbers ~~may~~shall remain in disconnect or a combination of disconnect and transitional status for ~~up to~~ four months. No requests for extension of the 4-month disconnect or transitional interval shall be granted. All toll free numbers in disconnect status must go directly into the spare, unavailable or high value category upon expiration of the 4-month disconnect interval. Responsible Organizations shall not retrieve a toll free number from disconnect or transitional status and return that number directly to working status at the expiration of the 4-month disconnect interval.

(e) *Suspend Status.* Toll free numbers may remain in suspend status until changed to working

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status or for a maximum of 8 months, whichever occurs first. Only numbers involved in billing disputes shall be eligible for suspend status.

(f) *Unavailable Status.* (1) Written requests to make a specific toll free number unavailable must be submitted to the Toll Free Numbering Administrator ~~DSM~~ by the Responsible Organization managing the records of the toll free number or by the FCC. The request shall include the appropriate documentation of the reason for the request. The Toll Free Numbering Administrator ~~DSM~~ is the only entity that can assign this status to or remove this status from a number. Responsible Organizations that have a toll free subscriber with special circumstances requiring that a toll free number be designated for that particular subscriber far in advance of its actual usage may request that Toll Free Numbering Administrator ~~DSM~~ place such a number in unavailable status.

(2) Seasonal numbers shall be placed in unavailable status. The Responsible Organization for a toll free subscriber who does not have a year round need for a toll free number shall follow the procedures outlined in §52.103(f)(1) of these rules if it wants DSM to place a particular toll free number in unavailable status.

#### **§52.105 Warehousing.**

(a) As used in this section, warehousing is the practice whereby Responsible Organizations, either directly or indirectly through an affiliate, reserve toll free numbers from the Service Management System database without having an actual toll free subscriber for whom those numbers are being reserved.

(b) Responsible Organizations shall not warehouse toll free numbers. There shall be a rebuttable presumption that a Responsible Organization is warehousing toll free numbers if:

(1) The Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved from the Service Management System database; or

(2) The Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with a toll free number before switching that toll free number from reserved or assigned to working status.

(c) Responsible Organizations shall not maintain a toll free number in reserved status if there is not a prospective toll free subscriber requesting that toll free number.

(d) A Responsible Organization's act of reserving a number from the Service Management System database shall serve as that Responsible Organization's certification that there is an identified toll free subscriber agreeing to be billed for service associated with the toll free number.

(e) *Tariff Provision.* The following provision shall be included in the Service Management System tariff and in the local exchange carriers' toll free database access tariffs:

[T]he Federal Communications Commission ("FCC") has concluded that warehousing, which the FCC defines as Responsible Organizations, either directly or indirectly through an affiliate, reserving toll free numbers from the SMS database without having an identified toll free subscriber from whom those numbers are being reserved, is an unreasonable practice under §201(b) of the Communications Act and is inconsistent with the Commission's obligation under §251(e) of the Communications Act to ensure that numbers are made available on an equitable basis; and if a Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved from the database, or if a Responsible Organization does not have an identified, billed toll free subscriber before switching a number from reserved or assigned to working status, then there is a rebuttable presumption that the Responsible Organization is warehousing numbers. Responsible Organizations that warehouse numbers will be subject to penalties.

#### **§52.107 Hoarding.**

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(a) As used in this section, hoarding is the acquisition by a toll free subscriber from a Responsible Organization of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service. The definition of hoarding also includes number brokering, which is the selling of a toll free number by a private entity for a fee.

(1) Toll free subscribers shall not hoard toll free numbers.

(2) Except as described in subsection (4), nNo person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee.

(3) Routing multiple toll free numbers to a single toll free subscriber will create a rebuttable presumption that the toll free subscriber is hoarding or brokering toll free numbers.

(4) A toll free subscriber may transfer the rights to use a toll free number to another person or entity (a) when the toll free subscriber is selling other business assets associated with the use of the toll free number to the same person or entity, (b) if the free number is mistakenly returned to the spare pool and picked up by another carrier or (c) to correct a fraudulent or unauthorized transfer of a toll free number or inadvertent transfer of a shared use number.

(b) *Tariff Provision.* The following provision shall be included in the Service Management System tariff and in the local exchange carriers' toll free database access tariffs:

[T]he Federal Communications Commission ("FCC") has concluded that hoarding, defined as the acquisition of more toll free numbers than one intends to use for the provision of toll free service, as well as the sale of a toll free number by a private entity for a fee, is contrary to the public interest in the conservation of the scarce toll free number resource and contrary to the FCC's responsibility to promote the orderly use and allocation of toll free numbers.

#### **§52.109 Permanent cap on number reservations.**

(a) A Responsible Organization may have in reserve status, at any one time, either 2000 toll free numbers or 7.5 percent of that Responsible Organization's numbers in working status, whichever is greater.

(b) A Responsible Organization shall never reserve more than 3 percent of the quantity of toll free numbers in spare status as of the previous Sunday at 12:01 a.m. Eastern Time.

(c) The Wireline Competition Bureau shall modify the quantity of numbers a Responsible Organization may have in reserve status or the percentage of numbers in the spare poll that a Responsible Organization may reserve when exigent circumstances make such action necessary. The Wireline Competition Bureau shall establish, modify, and monitor toll free number conservation plans when exigent circumstances necessitate such action.

#### **§52.111 Toll free number assignment.**

Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission.

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*Data sources used in deliberations*

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# Appendix E

*Data sources used in deliberations*

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Additional Data Sources used in deliberations

- *Toll Free Assignment Modernization, Notice of Proposed Rulemaking*, FCC 17-124 (Sept. 28, 2017).
- December 7, 2017 Letter from Chris Monteith, Chief of the FCC Wireline Competition Bureau to the NANC Chair re: Toll Free Assignment Modernization [www.nanc-chair.org/docs/mtg\\_docs/Dec17\\_NANC\\_Referral\\_TFAM.pdf](http://www.nanc-chair.org/docs/mtg_docs/Dec17_NANC_Referral_TFAM.pdf)
- December 7, 2017 Presentation to NANC on the Toll Free Assignment Modernization Proceeding [www.nanc-chair.org/docs/mtg\\_docs/Dec17\\_NANC\\_TFAM\\_Presentation\\_12\\_7\\_17\\_FINAL.pdf](http://www.nanc-chair.org/docs/mtg_docs/Dec17_NANC_TFAM_Presentation_12_7_17_FINAL.pdf)
- *ATIS Industry Guidelines for Toll Free Number Administration (ATIS-0417001-003)*
- November 14, 2013 Letter from Thomas Goode, ATIS General Counsel to Ann Stevens, Deputy Chief, FCC Competition Policy Bureau in CC Docket 95-155. (ATIS/ SNAC Letter)
- December 6, 2000 letter from L. Charles Keller of the FCC's Common Carrier Bureau to Mike Wade of DSMI (Keller / Wade letter)
- June 20, 2011 NANC Future of Numbering (FoN) Working Group White Paper on Toll-Free Resources
- Arch 7, 2018 Presentation by Somos to the NANC TFAM Working Group entitled "Toll-Free 101" available at [www.nanc-chair.org](http://www.nanc-chair.org)
- *In the Matter of Toll Free Serv. Access Codes*, 12 F.C.C. Rcd. 11162, 11164 (F.C.C. 1997)
- *In the Matter of Toll Free Serv. Access Codes*, 22 F.C.C. Rcd. 22188, 22191 (F.C.C. 2007)



## Exhibit 2

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**Subject:** White Copy  
**Date:** Wednesday, September 5, 2018 at 10:28:46 PM Eastern Daylight Time  
**From:** Joel Bernstein  
**To:** William Andrie  
**Attachments:** image001.png, image002.png

Bill – I'm in a Somos leadership meeting in our Westford, MA office, so I just finished my review. First, it is a very well-written document. Very impressive. You, Alex, Heather and everyone else should be proud of your work. Congrats all around!

I do have a few nits that you may want to look at.

1. In paragraph 89, the rule is misstated and it is VERY important to get this right. The four month rule in 52.103(d) says that numbers can stay in Disconnect Status for **up to** four months. There has been controversy over whether this means a number can be spared before four months, or whether the four months is an exact number. There has been several efforts (including in the TFAM report) to clarify this. If the Commission is really clarifying this, that needs to be very explicit and the Final Rule section needs to have that change, as well. If the Commission is NOT changing the rule at this time, you **MUST** include the words "up to" before four months. Not being clear on this will send the industry (and Somos) into a frenzy. I'm not asking the Commission to take one side or the other. I am asking the Commission to be absolutely clear about the intent of this paragraph.
2. In paragraph 66 (one I'm guessing you wrote), is the rule that, if the auction proceeds result in a greater than 25% decrease for five years combined, or just as a single year? Assume the revenue requirement is \$56m. Will money go to the NANPA when auction revenues exceed \$14m or \$70m? Either way, you should probably add something to be very clear about which one it is. Both situations are highly hypothetical, but I understand you need to plan for contingencies. If I can read it two ways, others may also.
3. We prefer "Somos'" to "Somos's." This is in paragraphs 58, 61, and 65 and footnote 143. Not a huge deal, but we should try and be consistent where we can.

I'm in meetings here until 1:30 tomorrow (Thursday) and then heading to the airport and back home, so I'll have time from 1:30 to 3:00 (if I make the 3:00) or 4:00 to chat if you want. Or Friday.

Cheers,

JB



**SOMOS®**

**Joel Bernstein**

Vice President, Regulatory and Public Policy

Call or Text | 844-HEY-JOEL or 844-439-5635

Email | [jbernstein@somos.com](mailto:jbernstein@somos.com)

Web | [www.somos.com](http://www.somos.com)

