

Before the

Federal Communications Commission Washington, D.C. 20554

In the Matter of)

Toll Free Assignment Modification WC Docket No. 17-192

Toll Free Service Access Codes) CC Docket No. 95-155

Comments of 800 Response Information Services LLC

These Comments are submitted on behalf of 800 Response Information Service LLC (“800 Response”) in response to the *Notice of Proposed Rulemaking* (“NPRM”) released September 28, 2017, in the above-referenced docket. In the *NPRM*, the Federal Communications Commission (“Commission”) seeks input on a variety of proposed modifications to the methods used for assigning Toll Free Access Codes, including auctioning of

toll free numbers. 800 Response does not support the auction of toll free numbers and urges the Commission to refrain from adopting many of the recommendations put forth in the NPRM.

800 Response is an active member (and co-chair) of ATIS SNAC and has worked closely with that group in the drafting comments filed by ATIS SNAC with respect to this matter. We fully support the positions laid out in those comments. 800 Response also played an active role, working with Somos, Inc. and ATIS SNAC in developing the procedures for the release of the 855, 844 and 833 toll free code openings.

THE CURRENT PROCEDURES DEVELOPED BY SOMOS WITH INDUSTRY INPUT, AND UNDER THE COMMISSION'S GUIDANCE, ARE FAIR AND EFFECTIVE

In anticipation of the upcoming 833 code opening, ATIS SNAC identified and reviewed the procedures associated with the most recent (855, 844) code openings; identified and evaluated alternatives to those procedures that would result in more efficient and fair code openings; identified recommendations that had consensus support of SNAC member companies; and provided information to, and solicited input from, the Resp Org community.

As a result of this work, SNAC reached consensus agreement on the following recommendations:

- The decision regarding when to open a new Toll Free code should be based upon the expected number of months until code exhaustion, rather than upon the percentage of number of currently open codes in use.
- The date of the code opening, once set, should not be changed.
- Rationing rules should be developed by ATIS SNAC and SMS/800, Inc.

that can be implemented when exhaust predictions based on the total number of spares remaining and the months until the code opening date indicate that number utilization is proceeding faster than expected.

- Each code opening should make only a single new Toll Free code available.
- During the first twenty (20) days of a new code opening, each Resp Org Company should be limited to reserving 100 numbers per day.

Additionally, to create fairness and equity among companies, the term “Resp Org Company” was defined so as to limit Affiliated Groups of Resp Orgs from obtaining any more than 100 number reservations per day per Affiliated Group. Resp Orgs were required to file an affidavit with Somos indicating all affiliated entities and Resp Org Companies that failed to file this affidavit were barred from reserving numbers from the new code for the initial 20-day period.

ATIS SNAC noted that “a survey was sent to all Resp Orgs to confirm whether there was broad support for the last two issues. Approximately 20% of the 380 unaffiliated Resp Orgs responded. Of these 76 respondents:

- 89% (66 respondents) supported the SNAC-proposed limit of 100 reservations per day per affiliated group;
- 78% (59 respondents) supported reducing the period of time during which Resp Orgs are limited to 100 numbers per day from the first thirty (30) days to the first twenty (20) days.”¹

¹ See ATIS Letter to Marlene H. Dortch, Secretary, Federal Communications Commission; filed in CC Docket No. 95-155; dated October 30, 2015.

In the opening of the 833 code, Somos addressed this issue appropriately, requiring affiliated Resp Orgs to identify themselves, and treating them as a single entity. Working with the industry, and in conformity with the Commission's guidance, which was provided on each code release, Somos has now refined the release procedures to the point that they result in are fair, orderly, and efficient openings. The Commission should not discard the lessons of the last three code openings for an untested auction process, the benefits of which are questionable, as discussed below.

THE UNTESTED AUCTION PROCESS WILL FACILITATE ANTI-COMPETITIVE BEHAVIOR BY LARGER RESP ORGS AND INCENT WAREHOUSING AND HOARDING

800 Response agrees with ATIS SNAC that use of an auction for the allocation of toll free numbers would not be fair, efficient or equitable, and would require the development of complex rules and costly new systems to accommodate the auction process. This will be the case whether the auction process is used for the 17,000 numbers set aside from the 833 code, the numbers currently released on a nightly basis, or for the release of future toll free codes such as 822.

Using an auction methodology to allocate toll free numbers would incent Resp Orgs to become toll free number brokers. Larger Resp Orgs could use their financial resources to obtain large blocks of desirable numbers, and then use those numbers to improve their competitive position in the market for toll free service to the detriment of smaller toll free service providers. Permitting Resp Orgs to own numbers would be an about face from the long-held and equitable doctrine of limiting control to Subscribers, and undermine the Commission's policy of requiring unrestricted number portability.

The NPRM (par. 9) states the debatable conclusion that “an auction assignment mechanism for mutually exclusive toll free numbers will promote efficiency by assigning these numbers to the parties that value them most.” The auction concept assumes that on the day that the auction is held, large numbers of businesses will participate and bid either to replace their existing toll free numbers or to place some or all on the shelf for future use. Based on 800 Response’s 28 years in the toll free business, this is not how the market works. Businesses typically search for toll free numbers when there is a change factor – opening a new business, a new product line, a new location, a new advertising strategy, etc. There is little to no awareness or interest in the marketplace of when new codes are released, and there is no reason to believe that large numbers of businesses will participate in any auction.

On the other hand, under the auction approach, there would be an enormous incentive for number brokers with adequate financial resources to purchase and hoard numbers until they identified a buyer willing to provide them with an acceptable return on their investment. The economic goal of moving numbers to more valuable uses might be achieved, but much of the monetary value inherent in numbers would go to number brokers, something the Commission has assiduously tried to avoid for the past 25 years.

800 Response offers the following comments directed at specific inquiries in the NPRM. For convenience, we have provided the paragraph numbers and a description of the subject referenced in the Notice.

NPRM Para 8. Is an auction more equitable than first-come, first-served?

As discussed above, the release process developed by Somos, and supported by the industry, is a fair and efficient method of allocating numbers. Most important is the initial period during which each Rep Org Affiliated Group is restricted to a specific number of reservations per

day for a specified number of days. While there is anecdotal evidence of number brokers hoarding (or Resp Orgs warehousing) numbers, the Somos reservation process limits the quantity of desirable numbers that any single entity can obtain. For this reason it is more equitable than an auction in which a small number of well-financed brokers, including the larger Resp Orgs, will have the ability to corner the market on the most desirable numbers.

NPRM Para 12-13. The Commission proposes the single round, sealed bid Vickrey auction for the 17,000 set aside from 833, but intends to delegate authority to decide in the future.

800 Response urges the Commission to leave the 17,000 mutually exclusive 833 numbers in their current “set aside” status until the next toll free code release, and to include them with the numbers released at that time. The duration of the restrictive period and/or the quantity of numbers available to each Resp Org (or Affiliated Group of Resp Orgs) can easily be adjusted to accommodate the additional 17,000 mutually exclusive 833 numbers. This will assure that they are released in a fair and equitable manner along with all the other numbers in the new code. It is unclear how 17,000 numbers (approximately 40 for each of the roughly 473 Resp Orgs) could be released fairly if done in a separate release, and the expenditure of resources on a separate release, both by Somos and the Resp Org community, would not be justified when there is a demonstrably equitable alternative which would require nothing more than waiting another year or two for the release of those numbers.

The FCC should decide the issues raised in the NPRM, and not delegate authority to change the number allocation process to the Wireline Competition Bureau. Most of the issues addressed in the NPRM have been pending for 20 years or more. Rather than delegate authority to the Bureau, the Commission should decide the issues, so that the industry and the users of toll free service (primary businesses) will have clear direction as to the applicable regulations, enabling long-term planning.

NPRM Para 21. The Commission proposes that only Resp Orgs be permitted to participate in an auction and that Subscribers should be required to approach a Resp Org. The Commission suggests that Resp Orgs may be able to piece “together geographic coalitions of Subscribers who may be unable to coordinate by themselves.”

Resp Orgs have from inception served as the authorized representative of the Service Subscriber (the entity that has control over the choice of Resp Org, carrier, and routing). An auction could very well result in Resp Orgs bidding against their customers. Moreover, if Resp Orgs are permitted to buy numbers, they would be incented to exploit auctions to purchase and warehouse numbers for future resale. In an auction, this would put them in direct competition with their Subscribers, who the Commission is suggesting would be required to place bids through Resp Orgs.

Additionally, an auction would place an enormous cost (system development, new hires, new procedures, etc.) on both Somos and Resp Orgs. The bidders in any auction should be the Service Subscribers; not Resp Orgs.

NPRM Para 22. The Commission seeks comment on ways to notify potential Subscribers and encourage participation. Should the Commission require Subscriber information in the TFNA database to facilitate publication?

The institution of such a rule would require the collection up to 50 million entries, and likely cost hundreds of millions of dollars in terms of the resources required by 473 Resp Orgs to collect and verify Subscriber information, address privacy concerns, etc. Should such a rule be implemented, at the very least, Subscribers should be entitled to privacy if they do not want their numbers published, as is permitted with geographic numbers.

The costs associated with providing adequate notification to the public that toll free numbers will be auctioned -- including a detailed description of the policies and procedures to be followed -- would be millions, if not tens of millions of dollars, given that virtually any business in the country would be a potential participant. Further, the Commission has suggested no mechanism for funding the upfront costs of publication, or the payment of those costs if revenues generated by the auction fall far short of covering those costs, not to mention the auction-related costs incurred by Somos or whatever other body is tasked with running the auction. Who will ultimately foot the bill for the shortfall? The Resp Orgs, who will undoubtedly be left with the bill for their own costs of participating? The Subscribers to other toll free numbers?

NPRM Para 22. Are there other reasons for requiring Subscriber information in the database, e.g. to resolve disputes?

In 28 years in the toll free business, 800 Response has encountered hundreds of disputes over numbers, and has never had trouble resolving them under the current Resp Org processes. Not a single dispute required the intervention of the Commission. As we say in New England, if it ain't broke, don't fix it.

NPRM Para 22. Should such information be visible to other bidders, and not just TFNA?

No. It would be the equivalent to requiring Resp Orgs to publish their customer lists. The privacy interests, of both Subscribers and Resp Orgs, should be given consideration by the Commission. With the recent security leaks in the databases of Equifax and the SEC, it must be recognized that the creation of any new database entails significant risk of a security breach. There is no compelling need to create such a database.

NPRM Para 23. The Commission proposes not to limit the quantity of #'s that Resp Orgs can acquire.

Any such restriction constrains the market. The more complicated an auction process, the more opportunity for abuse. Would Resp Orgs be required to bid on behalf of their customers before they bid on their own behalf? What would happen to the bids of its remaining customers once a Resp Org reached its limit? There are a myriad of potential pitfalls in such an arrangement, which, if nothing else, demonstrates why bidding should not be conducted by Resp Orgs. Moreover, unless there is a change in the resources available for enforcement, the inability

to enforce the Commission's brokering rules in the past suggests that new rules will suffer the same fate. In such a situation, both the Subscribers and Resp Orgs which abide by the Commission's regulations would suffer, while the violators would walk away with the spoils.

NPRM Para 25. What would make a good auctioneer? TFNA?

The Toll Free Number Administration should not serve the function of auctioneer. The TFNA, which has no experience in conducting auctions, would be called upon to develop entirely new processes, including methods of ensuring Subscriber authentication and authorization and procedures for identifying and resolving disputes, with the costs of such systems presumably being financed through Resp Org fees. There is no evidence to indicate that auctions will be successful in raising the funds required to support a new bureaucracy, leaving open the possibility that Resp Orgs and their customers will be left holding the bill for what can only be seen as an experiment.

NPRM Para 26. Treatment of funds. The Commission seeks comment as to whether to apply auction funds to offset the TFNA?

The TFNA currently sets rates based on cost of providing service and an annual revenue requirement. The cost of providing the services of the TFNA is only \$.1094 per number per month. There is no compelling reason to subsidize those monthly per number fees. In fact, as the number of toll free numbers in use increases, the cost per number should continue to decrease over time as it has been for years.

NPRM Para 29-30. Should the Commission consider other approaches such as a lottery or first-come, first-served? Are there any benefits to the current approach?

The current approach, while not perfect, has been thoughtfully examined and collaboratively modified over the years to the point where it now results in fair and efficient number allocation. This approach combines the long-accepted theory of first-come, first-serve with a mechanism for a restricted period for the first few weeks of a new code release. The current process limits acquisition of new numbers by limiting Resp Orgs or Resp Org Affiliated Groups to 100 #'s/day – thus guaranteeing that the numbers are spread fairly, mostly to the majority of Resp Orgs that abide by the rules and are committed to their customers

NPRM Para 30. The Commission "seeks comment on revising our current rules to promote a secondary market for toll free numbers generally".

Currently, only those prepared to engage in illicit conduct broker numbers on a regular basis. While the largest brokers maintain a low profile, they are actively selling numbers, and 800 Response encounters them in the marketplace periodically. At the same time, the current situation results in thousands of people violating the law every month when selling toll free numbers along with the sale of a business.

To address the latter situation, we support the ATIS SNAC comments that certain exceptions need to be made for the transfer of toll free numbers directly between Subscribers: for example, in a secondary market, a business owner who wants to sell his or her business may sell the right to use the toll free number associated with the business.

NPRM Para 31. The current “Black Market” indicates there is significant demand. Comment sought “in particular, on the impact of a rule change on our public resource precedent.”

The “Black Market” reflects the lack of effective enforcement of the existing rules. Toll free numbers have been listed on eBay for years and as noted above, number brokering is a common occurrence. In the absence of adequate enforcement, the violators of the rules have enjoyed a monopoly over the sale of numbers. The correct response would be to increase enforcement, not to institute an entirely new regulatory framework equally open to abuse, particularly to hoarding and warehousing.

NPRM Para 32. Should TFNA “receive any transaction proceeds or charge any fees to offset number administration costs.”?

No. As discussed above with respect to Auctions (NPRM Para 26) the fees currently charged for toll free number administration are nominal, and sufficient to fund the operations of the TFNA.

NPRM Para 32. Should there be a transaction fee for transfers in the secondary market?

If number sales (direct transfers of Subscribership between parties for a fee) become a reality, there should be no additional fee or taxes collected pursuant to such transactions. As with the purchase and sale of any business asset there will be income taxes assessed on the seller, and most number sales are part of a business sale. The collection of such fees would require an entirely new and cumbersome taxation mechanism, the costs of which could easily exceed the fees generated.

Resp Orgs should not be involved in the collection of taxes or fees related to transfers of toll free numbers. This would be a costly, administrative nightmare for the 473 Resp Orgs. Should the Commission decide to permit such transactions, and impose fees, the purchasing party should bear exclusive responsibility for compliance with any applicable regulations and the payment of any associated fees, as the majority of such transactions are known only to the parties involved.

NPRM Para 32. Should the Commission regulate fees charged by Resp Orgs?

No. There is a highly competitive market for Resp Org services. Subscribers can always change their Resp Org, and they have hundreds to choose from.

NPRM Para 32. Would a secondary market have an impact on settling trademark or branding

disputes in desirable toll free numbers?

While a trademark or branding dispute might be settled through the transfer of a toll free number, such disputes might also be fueled by the ability of one company to easily obtain a toll free number that conflicts with the intellectual property rights of another. There is no way of predicting what the effect of a free market would be.

NPRM Para 33. What information does TFNA need to document a reassignment?

None is required, as the TFNA does not handle documentation relating to Subscribers. That situation, supported by the overwhelming majority of the Resp Org community, is as it should be. As discussed above, in the comments on NPRM par. 22, Resp Orgs should not be required to place Subscriber information in the Database.

NPRM Para 33. Should the Commission or TFNA maintain a database of #'s for sale?

No. The prohibition on brokering should be retained, so there is no need for such a database.

NPRM Para 33. “How could the Commission or the TFNA help ensure members of the public are able to verify that an entity is in fact a Resp Org?”

The TFNA already maintains a public database of all Resp Orgs.

NPRM Para 33. “Are there additional roles or functions the TFNA could perform or provide that would benefit functioning of a secondary market or market participants?”

Should the Commission repeal the brokering rules, the TFNA should maintain its singular focus on its role as a neutral and effective administrator of the SMS Database. It should not become involved in activities related to brokering or any other activity which could divert the focus on its important mandate.

NPRM Para 36. Brokering: “The brokering rule was adopted with the intention of equitably assigning numbers and minimizing number exhaust. However, we now question whether the brokering rule was a useful way to achieve those ends.”

While we are in general agreement with ATIS SNAC that a free market would, at least theoretically, be advantageous from an economic standpoint, there is ample evidence that the ability to transfer numbers, whether legally or illegally, creates an incentive to warehouse and hoard numbers. To date the Commission has not been able to dedicate sufficient enforcement resources to prevent this (illegal) activity from taking place. Unless such resources are available

to address the issue in the future, relaxing the brokering rules will lead to increased warehousing and hoarding, to the detriment of the public, negating any economic benefit.

Notwithstanding, as noted above, 800 Response supports the position of ATIS SNAC that the ban should be relaxed with respect to the exceptions previously supported by SNAC, such as permitting transfers in the case of the sale of a business, or the accidental publication of a number if both parties consent thereto.²

NPRM Para 37. Comment on proposed revisions to warehousing and hoarding rules.

The warehousing and hoarding rules should be retained as both activities lead to the premature exhaust of the toll free resource. In addition, they prevent private parties from engaging in such activity in order to usurp for themselves the value inherent in highly desirable toll free numbers. The rules in place, such as the requirement that a Resp Org must have an identified customer when reserving numbers and that having more than one number terminating to the same POTS creates a rebuttable presumption of hoarding, are appropriate and necessary regulations. Improved enforcement remains the key to an effective regulatory regime.

NPRM Para 37. Warehousing and Hoarding: Should the rules be kept in place? (Possibly change the number that Resp Orgs can hold without a customer?) “Without these rules, will Resp Orgs and Subscribers hold numbers they no longer need, hoping to sell them later at higher prices?”

The rules should be kept in place because the answer to the second question is yes. Some Subscribers already hold numbers longer than they need to, and have been doing so for many years.

NPRM Para 37. Limit the time a Resp Org can hold without using or selling?

Under current rules, a Resp Org must have an identified customer for any reserved number.³

² See ATIS Letter to Marlene H. Dortch, Secretary, Federal Communications Commission; filed in CC Docket No. 95-155; dated June 16, 2011.

³ (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. 47 C.F.R. §52.103 (9) (b)

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

NPRM Para 37. What constitutes “use” if limitations are applied?

This is a question to which there is no answer, as there are applications for which the publication of a toll free number is required even when there are few, if any, calls to that number. For example many advertisers place a different toll free number in each advertisement in order to track response. Inevitably there are some numbers which receive no calls. Another example would be toll free numbers placed on products manufactured years ago – e.g. a vital piece of health equipment. One call a year could affect a life or death situation.

NPRM Para 37. “In the alternative, should the Commission eliminate these warehousing and hoarding prohibitions, along with the brokering prohibition, and rely instead on market forces to determine if and when toll free numbers are sold in the secondary market?”

In theory, no, because a repeal would open toll free number assignment to a Wild West scenario of “anything goes”. In reality, if the brokering prohibition were repealed, warehousing and hoarding will become rampant because of the demonstrated lack of enforcement resources. Aside from the windfall reaped by the parties engaged in such illegal activity, the result would be premature toll free number depletion.

NPRM Para 39. The Commission seeks comment on whether certain desirable toll free numbers should be set aside to promote health, safety, education, and other public interest goals.

There is no need for a set aside for nonprofits or governments. Only two such situations in the past have led the Commission to compel the transfer of emergency numbers (the assignment of 800-RED-CROSS following Katrina and 1-800-SUICIDE for the Suicide Hotline). With such a limited demonstrated need there is no justification for building an entirely new regulatory framework.

There are a myriad of complex issues which would have to be addressed in any such framework were nonprofit educational and charitable organizations to be included, as the Commission suggests could be a possibility. There could be a whole new playing on which the Commission’s goals could be thwarted. Who would determine which of the more than 1.5 million nonprofits in the United States would be eligible? Who would be responsible for enforcing the rules? Would nonprofits be permitted to sell numbers to other nonprofits? Aside from the costs of establishing and enforcing the regulatory, hundreds of Resp Orgs would have to shoulder the costs of developing new systems to accommodate these arrangements. Given that no evidence has been presented to demonstrate that health and safety organizations require such as an arrangement, there is no justification for the outlay of both public and private resources which it would require.

Organization's certification that there is an identified toll free subscriber agreeing to be billed for service associated with the toll free number. 47 C.F.R. §52.105 (a) through (d).

NPRM Para 43. Should there be more transparency in Somos' costs?

Somos should be subject to the same transparency requirements as any other common carrier operating as a monopoly provider. Its budget should be subjected to regulatory scrutiny on a regular basis, with an opportunity for the industry to participate in any such proceedings. Because it does not operate in a competitive market, there is no reason for secrecy with respect to Somos costs or activities.

NPRM Para 38. Should the Commission change the definitions in the SMS Database relating to "status"?

The referenced definitions have been refined by SNAC, the industry committee with the mandate for developing the detailed rules for administering the system. SNAC, which is open to any member of the industry, is the proper forum for addressing these issues, as its members, including Somos, are the ones with the practical and detailed understanding of how the rules operate, and their effect on Resp Orgs and their customers. The arrangement has worked efficiently for over 25 years, with few or no complaints as to its effectiveness. Accordingly, there is no reason to institute changes.

NPRM Para 41. Should the Commission consider changes to overall toll free number management?

Since its assumption of responsibility for the operation of the SMS 800 Database in 2013 the TFNA has done an excellent job of efficiently and effectively serving the industry. Unlike its predecessor, it treats the Resp Orgs – which are the users of the SMS – as its customers, creating various channels for communications assuring that the needs of the industry and its customers are properly addressed. There is no need for changes to the management arrangements which have demonstrated their effectiveness in the short period since Somos assumed control.

Summary

The Rules and Procedures currently in place for allocating toll free numbers and opening new codes have been developed over a period of over 25 years with the input of countless stakeholders, and the recent (855/844) code releases have proven its effectiveness. Instituting auctions will result in a new revenue source for the government, but there is no evidence that the revenue will exceed the direct and indirect costs which will be incurred by the government or its designated agent and the Resp Org industry to accommodate an auction process.

The complexity of the NPRM, with over 100 separate questions posed to industry reflects the complexity of the subject matter. A new auction process will open new opportunities for abuse, while creating added cost. Such a change would produce a regulatory framework which could well be less equitable and efficient than the current one.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John Evancie', with a stylized, cursive script.

John Evancie | Vice President