

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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In the Matter of

Toll Free Assignment Modernization

Toll Free Service Access Codes

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WC Docket No. 17-192

CC Docket No. 95-155

**COMMENTS OF SOMOS, INC.  
ON NOTICE OF PROPOSED RULEMAKING**

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## TABLE OF CONTENTS

INTRODUCTION AND EXECUTIVE SUMMARY .....	1
DISCUSSION .....	2
I. Distribution of TFNs .....	2
A. Assignment Mechanisms Should Be Equitable and Efficient .....	2
B. Auction Participation Should Be Limited to Resp Orgs .....	3
C. Somos Could Facilitate an Auction and Incorporate Subscriber Information into the SMS/800 Database .....	4
II. Secondary Market for TFNs .....	5
III. TFN Administration .....	6
A. TFN Rule Revisions and Use of TFNs for Public Purposes .....	6
B. TFN Administration .....	7

## INTRODUCTION AND EXECUTIVE SUMMARY

Somos, Inc. (“Somos”) and its predecessors have provided neutral and effective administration of toll-free numbering for nearly 25 years. The current system of toll-free numbering administration has ensured that toll-free calling has “remain[ed] an important feature of the communications system,”<sup>1</sup> even as that system has experienced extraordinary change and innovation. The use of Toll-Free Numbers (“TFNs”) has steadily increased, growing from approximately 3 million TFNs in use when the Service Management System/800 (“SMS/800”) database was created in 1993,<sup>2</sup> to more than 41 million numbers in use today, necessitating the addition of six new toll-free NXX codes.<sup>3</sup> This growth reflects not only the unique benefits that TFNs provide to businesses, government agencies, non-profits, and consumers alike<sup>4</sup> but also the value that Somos and Responsible Organizations (“Resp Orgs”) have consistently contributed to the system through competent and efficient management of TFNs.

While many traditional telephony services have been in decline for several years, the use of TFNs continues to climb, remaining an important part of many businesses’ communications strategies. TFNs are trusted numbers often associated with brand identity, and their use today goes well beyond merely reversing long-distance charges. Innovation in the toll-free market is

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<sup>1</sup> Notice of Proposed Rulemaking, *Toll Free Assignment Modernization*, FCC No. 17-124, ¶ 1 (rel. Sept. 28, 2017) (“Notice”).

<sup>2</sup> See Notice of Proposed Rulemaking, *Toll Free Service Access Codes*, 10 FCC Rcd 13692, ¶ 8 n.20 (1995).

<sup>3</sup> *Report of the Toll Free Neutral Administrator (TFNA) to the North American Numbering Council* 2 (Dec. 1, 2016), [http://www.nanc-chair.org/docs/mtg\\_docs/Dec16\\_TFNA\\_Report.pdf](http://www.nanc-chair.org/docs/mtg_docs/Dec16_TFNA_Report.pdf).

<sup>4</sup> See Notice ¶ 1 (“Even with the growth of e-commerce many businesses, large and small, continue to use toll free numbers for sales and customer service, as well as for advertising and marketing purposes. Government organizations and non-profit health, safety, educational, or other non-profit public interest organizations also use toll free numbers to provide vital health and safety services to the public.”) (footnote omitted).

also driving adoption. TFNs are used for marketing analytics and are being dynamically inserted in mobile and online advertising. TFNs are also being text-enabled to give consumers even more choice in how they communicate with businesses, non-profits, and government agencies. The TFN industry is thriving and growing, which makes the Commission's present evaluation of TFN assignment very timely.

The Notice proposes a number of significant changes to the TFN ecosystem, such as creating an auction system for TFNs and facilitating a secondary market for TFNs. In keeping with its role as a neutral administrator, Somos generally takes no position with regard to the policy merits of the innovations in TFN assignment that the Commission has proposed. Rather, Somos files these comments primarily to emphasize two important points. *First*, Somos has the technical capability and expertise to implement the type of auction-based and market-based TFN assignment mechanisms that the Commission has proposed. *Second*, to the extent the Commission adopts new auction-based and/or market-based mechanisms to govern the assignment of TFNs (or some portion of them), it will be critical to maintain continuity and stability in TFN administration to ensure that any changes are overseen by an experienced and impartial entity.

## **DISCUSSION**

### **I. Distribution of TFNs**

#### **A. Assignment Mechanisms Should Be Equitable and Efficient**

The Commission proposes adding new mechanisms for the assignment of TFNs.<sup>5</sup> In particular, the Commission proposes using a single-round, sealed-bid Vickrey auction to assign the approximately 17,000 TFNs in area code 833 “for which there were mutually exclusive

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<sup>5</sup> See Notice ¶ 5.

requests.”<sup>6</sup> This proposal would represent a fundamental shift from how TFNs are currently assigned.<sup>7</sup> Somos supports the efficient and equitable assignment of TFNs for the benefit of the industry, end-users, and consumers, but Somos expresses no view regarding which method or methods of assignment would be most equitable or efficient.

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

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

Somos does not support direct subscriber participation in any TFN auction because it would introduce unnecessary and potentially costly administrative problems. Somos believes that any TFN auction mechanism should build on the functionalities of the SMS/800 database and be implemented consistent with the technical and procedural characteristics of that database. To achieve those efficiencies, Somos believes that it makes sense to limit auction participation to

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<sup>6</sup> *Id.* ¶ 6.

<sup>7</sup> *See* 47 C.F.R. § 52.111 (“Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission.”).

<sup>8</sup> Notice ¶ 21.

<sup>9</sup> *See id.*

the Resp Orgs that are currently certified to have access to the SMS/800 database.<sup>10</sup> Having access to the SMS/800 database requires Resp Orgs to take on defined obligations that ensure that the integrity of the database is maintained and that TFNs operate correctly,<sup>11</sup> including becoming certified in the complex process of routing TFNs.<sup>12</sup> Allowing subscriber participation in TFN auctions would undermine this delegation of responsibility to Resp Orgs and would require either constructing an auction mechanism outside of the existing SMS/800 database or qualifying a large number of new entities to access and use that database. Either of these options would be burdensome and complicated, thus impeding an effective and efficient auction.

### **C. Somos Could Facilitate an Auction and Incorporate Subscriber Information into the SMS/800 Database**

The Commission seeks comment on whether it should consider inclusion of subscriber information in the SMS/800 database as a means of notifying potential subscribers about auctions and encouraging subscriber participation in auctions through their chosen Resp Org(s).<sup>13</sup> The administrative and technological cost of adding subscriber information to the SMS/800 database would be de minimis. The updated SMS/800 database that Somos is deploying includes expandable field parameters that could be used to capture any information that the Commission requires, including subscriber information or any other information that the Commission deems necessary, such as sales history information. As a policy matter, adding

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<sup>10</sup> New Resp Orgs must pass a certification test and other requirements prior to accessing the SMS/800 database. Somos provides a week-long training class for new Resp Orgs to prepare for the certification test.

<sup>11</sup> See *Regulations, Rates and Charges Applying to the Provision of SMS/800 Functions and Support Services* (effective Feb. 15, 2017), <https://s3.amazonaws.com/files-prod.somos.com/documents/SMS800FunctionsTariff.pdf>.

<sup>12</sup> TFNs can be routed from specific Number Plan Areas (“NPAs”) and even specific NXX prefixes, depending on which calls the subscriber wants to receive.

<sup>13</sup> See Notice ¶ 22.

subscriber information to the SMS/800 database may have benefits, such as resolving disputes, helping law enforcement agencies, or providing greater market transparency for an auction. But any subscriber information entered in the SMS/800 database would have to be managed with due regard for subscriber privacy, Customer Proprietary Network Information rules, and Resp Orgs' legitimate competitive concerns.

The Commission also seeks comment on “the characteristics of an auctioneer who would be able to put in practice the [proposed] auction process . . . at the lowest cost.”<sup>14</sup> Somos submits that any auctioneer would need to have the same characteristics of neutrality and administrative competence that the Commission requires of the Toll-Free Numbering Administrator (“TFNA”). Further, as discussed above, Somos believes that it would be most efficient for any auction proceeding to take place within the infrastructure of the existing SMS/800 database administered by Somos. Thus, Somos would be able and well-positioned to use the existing number reservation system to facilitate an auction, and adding auction functionality to that system could be done quickly and in a cost-effective manner.

## **II. Secondary Market for TFNs**

The Commission seeks comment on “revising [its] current rules to promote development of a secondary market for [TFNs] generally.”<sup>15</sup> Somos expresses no view as to the merits of creating a secondary market for TFNs. Regardless of the policy merits of a secondary market, Somos believes that such a market would be technically feasible to develop and administer, using the existing SMS/800 infrastructure. For such a secondary market to function properly, Somos believes that there would need to be a neutral, centralized clearinghouse to facilitate

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<sup>14</sup> *Id.* ¶ 24.

<sup>15</sup> Notice ¶ 30.

transactions that could be referenced to adjudicate definitively any disputes regarding the right to use specific TFNs that are exchanged in the marketplace. Somos could create such a clearinghouse within its existing role as TFNA and operator of the SMS/800 database. Building on its quarter century of experience with Resp Orgs and the toll-free industry, Somos is uniquely positioned to administer any secondary market in TFNs.

The TFNA is particularly well-suited to oversee any secondary marketplace for TFNs because the administration of such a market would need to ensure equitable and non-discriminatory access to TFNs.<sup>16</sup> In this regard, the involvement of a neutral administrator in a secondary market would be especially important if the Commission were to implement its proposal to eliminate or to scale back the hoarding and warehousing rules.<sup>17</sup> In that scenario, a neutral administrator would be needed to ensure that anticompetitive behavior or other market failures did not undermine the statutory mandate of “equitable” access to TFNs.

### **III. TFN Administration**

#### **A. TFN Rule Revisions and Use of TFNs for Public Purposes**

The Commission seeks comment<sup>18</sup> on revising or eliminating certain TFN rules, including the first-come, first-served rule,<sup>19</sup> and the prohibitions on brokering,<sup>20</sup> warehousing,<sup>21</sup> and hoarding.<sup>22</sup> Somos expresses no view as to the policy merits of the Commission’s proposed

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<sup>16</sup> See 47 U.S.C. § 251(e)(1).

<sup>17</sup> See Notice ¶ 37 (seeking comment on whether to “revise or eliminate” the warehousing and hoarding prohibitions).

<sup>18</sup> Notice ¶¶ 34-38.

<sup>19</sup> See 47 C.F.R. § 52.111.

<sup>20</sup> See *id.* § 52.107(a)(2).

<sup>21</sup> See *id.* § 52.105.

<sup>22</sup> See *id.* § 52.107(a)(1).



rule revisions. However, these rules have played a major role in shaping the toll-free numbering system for the past 20 years. Therefore, any changes to these rules would introduce a paradigm shift to the TFN ecosystem, which in turn would make maintenance of a capable, experienced, and neutral TFNA more important than ever.

The Commission also seeks comment on whether certain desirable TFNs should be set aside for use, without cost, by government agencies and non-profit organizations, and whether the Commission should promulgate rules for reclaiming or reassigning such TFNs.<sup>23</sup> At the Commission's direction, Somos can and has set aside certain useful TFNs to promote the public interest. Somos agrees that there is sometimes a need to set aside, reclaim, or reassign TFNs in the public interest, and that such matters are appropriately addressed in the first instance by the Commission for implementation by the TFNA. Somos expresses no view as to the circumstances under which it would be appropriate to set aside, reassign, or reclaim TFNs in the public interest or as to the necessity or utility of codifying standards or procedures for doing so.

## **B. TFN Administration**

The Commission seeks comment on “whether the Commission should consider changes to overall toll free number administration,”<sup>24</sup> including “the current TFNA model.”<sup>25</sup> The current system of neutral TFN administration has functioned well for many years and has successfully adapted to the changing needs of toll-free subscribers. The Commission has not put forth any specific proposal(s) for how the current system of TFN administration might change, and Somos does not believe any different regulatory approach is warranted.

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<sup>23</sup> See *id.* ¶¶ 39-40.

<sup>24</sup> Notice ¶ 41.

<sup>25</sup> *Id.* ¶ 43.

Additionally, the Commission seeks comment on whether it should “consider a different mechanism for toll free number administration than the tariff mechanism,”<sup>26</sup> and to the extent the Commission retains the tariff mechanism, whether the Commission “should . . . require more transparency in Somos’s operations and budget.”<sup>27</sup> Somos supports maintaining the current SMS/800 Tariff because it provides transparency to the TFN administration process and ensures that SMS access is provided on a nondiscriminatory basis and at just and reasonable rates. Somos submits detailed financial information to the Commission each year to support proposed tariff filings,<sup>28</sup> and it is unclear how the Commission would propose making such financial information “more transparent” or why a more detailed breakdown of Somos’s costs would benefit the toll-free community.<sup>29</sup> Somos has always adhered to the requirement of charging cost-based rates for access to and use of the SMS/800 database and will continue to be subject to that requirement.

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<sup>26</sup> *Id.* ¶ 42.

<sup>27</sup> *Id.* ¶ 43.

<sup>28</sup> See Letter from Aaron M. Panner, Counsel for Somos, to Marlene H. Dortch, WC Docket No. 17-192, CC Docket No. 95-155, at 2 (filed Sept. 19, 2017).

<sup>29</sup> See Notice ¶ 43.

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