

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
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)	
Toll Free Assignment Modernization)	WC Docket No. 17-192
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
)	

COMMENTS OF VERIZON

The Commission is right to take a fresh look at its methods for assigning toll free numbers to ensure that its rules meet the needs of the business customers that use them. By the same token, the first-come, first-served process for obtaining toll free numbers has worked well for customers over 15 years. It enables a “Responsible Organization” or “RespOrg” to obtain numbers from the toll free number administrator quickly and efficiently to activate a number within a few days from a customer’s request. And, RespOrgs smoothly port numbers between one another, to the benefit of the requesting customer as well as the competing RespOrg. So, if the Commission moves ahead with its proposal to auction popular toll free numbers, it should do so in a targeted manner and in a way that preserves the many benefits and efficiencies of the current system.

Any rule changes should preserve components of the existing system to enable the Commission to meet its statutory obligations to make “numbers available on an equitable basis” and to apply administrative costs on a “competitively neutral basis.”¹ Thus: (1) the process for

¹ 47 U.S.C. § 251(e)(1)-(2).

obtaining toll free numbers from Somos should remain expeditious, predictable and at reasonable cost, and auctions should be targeted to popular numbers; (2) any new secondary market rules should preserve restrictions on brokering, warehousing, and hoarding to ensure that consumers and RespOrgs use toll free numbers efficiently and not reward speculative transactions untethered to a customer's bona fide need and use of a toll free number; and (3) administration of the toll free assignment process should be transparent and cost-efficient – and must remain competitively neutral.

I. AUCTIONS OF TOLL FREE NUMBERS SHOULD TARGET RESPORGS WITH A BUSINESS NEED TO PARTICIPATE IN THEM.

Any auction methodology – including the initial designation of numbers subject to auction in the first place – should ensure that auctions are used only for numbers for which there is a genuine competing demand by actual customers. The Commission should also continue to apply its first-come, first-served rule to most toll free numbers, as proposed in the *NPRM*,² to ensure that the availability and costs of numbering resources remains equitable and competitively neutral, and that RespOrgs and their customers use numbers efficiently.

A. Toll Free Number Auctions Will Impose Costs on RespOrgs and Their Customers.

Many customers will legitimately view a particular toll free number as contributing value to their businesses, and the *NPRM* fairly asks whether an auction could be an efficient method for assigning those numbers. Where a toll free number is “just a number,” though, the Commission should minimize the extent to which RespOrgs and their customers would incur auction-related costs and burdens. For RespOrgs opting to participate in auctions on behalf of

² See *Toll Free Assignment Modernization, Toll Free Service Access Codes*, WC Docket No. 17-192 and CC Docket No. 95-155, FCC 17-124, ¶ 11 (2017) (“*NPRM*”).

their customers, moving to an auction system would result in new IT/system and training costs and ongoing maintenance. Verizon, for example, would need to, at a minimum, update all of its systems used to control the use and assignment of toll free numbers for retail and commercial customers. These updates would prompt at minimum hundreds of thousands – possibly millions – of dollars in upfront IT costs that include project management, determining the requirements needed, design, coding, testing and deployment across multiple systems. To the extent such costs are reflected in the auction-related services provided to bidding customers, Verizon would incur additional IT work to establish the necessary billing systems. Verizon and other RespOrgs opting to support their customers’ efforts to obtain vanity numbers would incur these costs even if their customers never offer a winning bid, and would be *in addition to* RespOrgs’ current systems.³

And other costs and burdens may apply to all RespOrgs, regardless of whether they participate in auctions on customers’ behalf, as the Commission’s Initial Regulatory Flexibility Analysis seems to acknowledge.⁴ For example, if auctioned toll free numbers are subject to particular use or other conditions, RespOrgs may have to incur compliance-related IT/system costs to track and monitor those numbers when ported in from another RespOrg or otherwise obtained in a permissible secondary market transaction.⁵ As noted below, anti-collusion rules may need to apply to all RespOrgs to be effective. Finally, Somos would incur similar costs of

³ See *id.* ¶ 12.

⁴ See *id.* App. C ¶ 24 (“Auction procedure compliance will affect ... all RespOrgs”).

⁵ See *infra* Section II.

its own in its role as toll free number administrator (“TFNA”), which might be passed on to certain RespOrgs and their customers in some way if auction proceeds do not fully defray them.⁶

The Commission should thus take whatever steps it can to minimize the costs of using auctions for vanity toll free numbers, and to ensure that numbers are utilized efficiently. And whether a RespOrg participates in an auction on behalf of a customer, and incurs the accompanying implementation and customer relationship costs and burdens, should be at the RespOrg’s own discretion based on its own business judgment. In addition, assuming that the Commission intends to preserve the portability of toll free numbers (which it should), any auction system should remain focused on the customer’s interest in the number. To that end, the Commission should reiterate that RespOrgs do not maintain a property or licensee-type interest in a number, irrespective of whether the number was obtained via auction or first-come, first-served basis.⁷ And to deter speculative bidding, the Commission should impose certification and performance requirements to ensure that RespOrgs submit bids on behalf of actual customers and timely activate numbers.

B. Any Auction Regime Should Preserve Timely and Cost-Efficient Assignment of Toll Free Numbers to Business Customers.

The Commission should design an auction method to meet its statutory obligations at least as effectively as the well-established first-come, first-served approach. In that regard, Australia’s “smartnumber” auction system is of limited guidance as a model.⁸ Consumers, rather than RespOrgs, submit bids directly to the administrator in that system. In contrast, the

⁶ See *infra* Section III; *NPRM* ¶¶ 25-27.

⁷ See *NPRM* ¶ 31 (“neither carriers nor subscribers ‘own’ their numbers”).

⁸ See *id.* ¶ 11.

Commission designed the toll free numbering system in the United States to use RespOrgs to facilitate the portability of numbers and to meet Congress’s numbering administration goals.⁹

An equitable auction method, as the Communications Act requires, should enable RespOrgs and their customers to obtain numbers expeditiously and predictably. To achieve this goal, the method should (1) provide a very limited window of time for a competing request (and otherwise deter frivolous bids), (2) select the winning bid quickly, and (3) prohibit or severely limit challenges to winning bids so the winning RespOrg can timely activate the number for the customer. Use of a Vickrey “sealed bid” auction method would appear to better serve those objectives than an open or multiple round auction, but the details of the auction methodology will be important, including:

- *The Auction Queue.* The Commission should establish procedures to deter frivolous bids. Creating an “open window” to give another RespOrg an opportunity to submit a competing bid on any toll free number assignment, as the *NPRM* suggests for the next code opening,¹⁰ could invite game-playing by competing RespOrgs that delays the assignment and timely use of the number.
- *Reserve Bids.* A reserve (minimum bid)¹¹ could unnecessarily increase the cost of the number to the customer, calling into question whether it is an “equitable” practice. Small business customers in particular may be unwilling or unable to pay a substantial premium for toll free numbers.
- *Bid Collusion.* An efficient Vickrey auction (premised on submission of a single *private* bid to the auctioneer) could invite collusion among potential bidders. So, anti-collusion rules would likely need to apply to all RespOrgs, whether or not they bid in an auction for a particular number. But those rules would need to be flexible enough to allow a RespOrg to submit on behalf of multiple interested customers.

Finally, for an auction to function efficiently, the Commission should provide certainty about the transactions permitted in the secondary market. The onus of valuing the number

⁹ 47 U.S.C. § 251(e).

¹⁰ *NPRM* ¶ 21.

¹¹ *See id.* ¶ 17.

should rest with the customer seeking it, and a subscriber's ability to retain or transfer a number as its business evolves will be a critical input to that valuation. Restrictions on brokering, hoarding and warehousing, and the privacy of subscribers' identities,¹² will necessarily limit the value of a number for more speculative bidders – which is appropriate, as those rules serve important statutory and public interest benefits. As discussed below, these restrictions should remain in place, with the exception of a limited carve-out of the brokering prohibition to facilitate legitimate, non-speculative business transactions. The Commission should ensure that a RespOrg's compliance with those rules is a condition of participating in any auction.

II. PERMISSIBLE SECONDARY MARKET TRANSACTIONS SHOULD NOT INCLUDE SPECULATIVE BROKERING, HOARDING OR WAREHOUSING.

In 2011 the Bureau affirmed that a RespOrg's customer may not transfer its toll free number(s) to another customer; such numbers must instead be placed into the "spare pool" for another RespOrg's first-come, first-served assignment.¹³ With an auction, the Commission should consider an exception to allow transparent, above-board secondary market transactions to account for legitimate business needs. This could be, for example, when the transfer of the number between customers is incidental to a bona fide merger, acquisition, bankruptcy, or other general corporate ownership change, or when a number is returned to the spare pool as the result of an administrative error.¹⁴ In those cases, any consideration (*i.e.* compensation) for the number

¹² See *NPRM* ¶ 22. Many toll free subscribers have valid interests in maintaining the privacy of their numbers, and widespread access to subscriber information in the toll free database could reveal information concerning a subscriber's service relationship with its service provider RespOrgs, as well as carrier proprietary information. See 47 U.S.C. §§ 222(a)-(c).

¹³ See *Transaction Network Services, Inc. et al.*, Declaratory Ruling, 26 FCC Rcd 2109, ¶¶ 7-9 (WCB 2011) (citing 47 C.F.R. § 52.103(a)(6)).

¹⁴ See *NPRM* ¶ 30; see also ATIS Comments, ET Docket No. 17-215, at 13 (Oct. 30, 2017) (supporting these limited exceptions in Technological Advisory Council inquiry).

would occur directly and exclusively between the two consumers. And both consumers would disclose the transaction to Somos, make any appropriate certifications concerning the lawful use of the numbers, and approve any associated transfer documentation if the number is incidentally moved from the transferor's RespOrg to the transferee's. In those cases, the number is an asset that is incidental to the customer's business (*e.g.* selling flowers), not the business itself. This policy could obviate the need for the Commission to expend resources on rule waiver requests and give businesses that rely on toll free numbers additional certainty regarding their business plans (including whether to direct their RespOrgs to bid for newly available numbers at auction).

The Commission should couple such an approach, however, with policies to ensure RespOrgs and their customers do not rapidly deplete the spare pool. The Commission should thus otherwise maintain the current restrictions on brokering, warehousing and hoarding, which serve this important purpose by ensuring that toll free numbers are efficiently and actually utilized by and tied to individual customers.¹⁵ Lifting those restrictions beyond the very limited degree described above will strain the available numbers in the spare pool – which, in turn, would expedite the exhaust of available numbers and necessitate yet another NPA opening. And such a development would require the industry to incur the costs and burdens of additional new translation and service control point (SCP) capabilities earlier than necessary. Finally, toll free numbers continue to be (mis)used for fraudulent or other improper reasons, such as slamming, robocalls, and arbitrage schemes, and the rules should not inadvertently encourage such uses by making it more difficult to determine who is using the number(s) and for what purpose.¹⁶

¹⁵ *NPRM* ¶¶ 36-37.

¹⁶ *See id.* ¶ 40.

III. TOLL FREE NUMBER ADMINISTRATION COSTS MUST REMAIN EQUITABLE AND COMPETITIVELY NEUTRAL FOR RESPORGS THAT DO NOT PARTICIPATE IN AUCTIONS.

The costs that RespOrgs will incur under (and the revenues derived from) an auction method raise a number of issues for the Commission's ability to meet its statutory numbering administration responsibilities. On one hand, Somos charges RespOrgs a significant monthly per-number fee, and measures that raise additional revenues in a manner that reduces these costs for all RespOrgs may make those costs more equitable. Restricting monies derived from the auction of toll free numbers to supporting Somos's regulated TFNA activities, and using them to reduce all RespOrgs' TFNA costs, could help achieve that goal.¹⁷ In a similar vein, Somos should be allowed to engage in new innovative service offerings, like other numbering administrators have done. But transparency continues to be important to ensure that fees paid are limited to critical TFNA functions and do not subsidize Somos's future competitive activities.¹⁸

Auction-related costs, however, raise significant legal questions that the Commission must address. Section 251(e)(1) of the Communications Act requires that numbering be administered impartially and "on an equitable basis."¹⁹ And Section 251(e)(2) requires that all numbering administration arrangements be "borne by all telecommunications carriers *on a competitively neutral basis*"²⁰ The Commission relied largely on the benefits of first-come first-served assignment and the SMS/800 tariff to meet the first criteria, and basic "cost causer"

¹⁷ See *id.* ¶ 25.

¹⁸ See *id.* ¶ 43.

¹⁹ 47 U.S.C. § 251(e)(1).

²⁰ *Id.* § 251(e)(2) (emphasis supplied).

principles to meet the second.²¹ But if new costs are imposed on *all* RespOrgs to support an auction method, regardless of whether a RespOrg chooses to bid for vanity numbers on its customers' behalf, the Commission must ensure that any such costs meet these threshold statutory criteria.

IV. CONCLUSION.

To meet the Commission's statutory numbering administration obligations, any new auction-based method of assigning toll free numbers should preserve the timely and cost-efficient availability of numbers to consumers, while limiting secondary market transactions to non-speculative corporate ownership changes and ensuring that RespOrgs and their subscribers utilize numbers efficiently.

Respectfully submitted,

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²¹ See *Toll Free Service Access Codes et al.*, Fifth Report and Order, 15 FCC Rcd 11939, ¶¶ 35-37 (2000).