

**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 CENTURYLINK

I. INTRODUCTION.

CenturyLink¹ files these comments in response to the Notice of Proposed Rulemaking (“NPRM”) released September 28, 2017 in the above-referenced dockets.² CenturyLink appreciates the FCC’s willingness to consider changes to long-standing policies in the interest of improving efficiency and fairness. Here, the NPRM proposes to use an auction to assign toll-free numbers in the 833 block rather than assigning numbers according to the first-come, first-served methodology used for decades. The FCC’s goal is to meet its statutory directive of making numbers available on an equitable basis, while also promoting more efficient use of limited numbering resources by “assigning these numbers to the parties that value them most.”³ CenturyLink is concerned, however, that using an auction to assign toll-free numbers would create more inefficiencies than it would resolve. If the FCC does conclude to move forward with an auction despite CenturyLink’s concerns, CenturyLink urges the FCC to conduct any auction

¹ These comments are filed by and on behalf of CenturyLink, Inc. and its subsidiaries.

² *Toll Free Assignment Modernization; Toll Free Service Access Codes*, WC Docket No. 17-192, CC Docket No. 95-155; Notice of Proposed Rulemaking, FCC 17-124 (rel. Sep. 28, 2017); 82 Fed. Reg. 47669 (Oct. 13, 2017).

³ NPRM, at ¶¶ 7-9.

on a limited, trial basis so there is adequate opportunity to study the impact of this new allocation method and make any necessary changes to serve the public interest.

II. CENTURYLINK IS CONCERNED ABOUT MAKING SWEEPING CHANGES TO TOLL-FREE NUMBER ASSIGNMENT.

A. The Current Toll-Free Number Assignment Method Generally Works Well.

The FCC has been using the current toll-free number assignment method for decades and, through its use, numerous blocks of toll-free numbering resources have generally been assigned in a timely and efficient manner. The rules that are part of the existing methodology establish important safeguards designed to prohibit bad practices, such as brokering, hoarding, and warehousing.⁴ The existing methodology, along with the supporting rules, together create a comprehensive framework that promotes equitable access to and use of numbering resources, while protecting against inefficiencies that attempt to game the system.

To help justify transitioning from the current allocation method to an auction, the NPRM states that “toll free numbers are a limited resource that are often used inefficiently because there is no real cost associated with obtaining that resource.”⁵ However, there is no evidence in the NPRM that shows numbers are being over-requested because they are essentially free. While in theory this could be an issue given the extremely low cost of obtaining toll-free numbers, in practice we lack hard evidence that this has created or contributed to an exhaust problem that needs to be addressed. The NPRM also cites that Somos (the Toll-Free Numbering Administrator) has identified approximately 17,000 mutually exclusive toll-free numbers in the 833 block, *i.e.*, numbers for which there were two or more requests for assignment, to support

⁴ See, e.g., 47 C.F.R. §§ 52.105, 52.107.

⁵ NPRM, at ¶ 9.

adopting an auction methodology.⁶ However, as observed by Commissioner Clyburn, these 17,000 mutually exclusive requests represent only a fraction – approximately 0.2% – of the eight million or so toll-free numbers available in the 833 block.⁷ The fact that there are so few “high demand” 8XX numbers with competing requests for use further illustrates that the current assignment system works well for the overwhelming majority of cases. Given these circumstances, there is an insufficient basis to justify adopting dramatic changes to the current methodology when only a very small market segment stands to benefit.

B. Assigning Toll-Free Numbers by Auction Stands to Create More Inefficiencies than It Would Resolve.

Auctioning numbering resources would constitute a sea change in numbering assignment. As such, the FCC should consider moving forward with the NPRM’s proposal only if there are significant problems with the current assignment method that can be assuredly resolved through an auction, and only if an auction would not cause harm or other unintended negative consequences that would outweigh its benefits. Neither of these circumstances is present here.

Auctions that award resources to the highest bidder can create inequities by generally favoring larger entities with deep pockets and greater access to capital. To combat this and level the playing field for all participants in accordance with statutory mandates, some FCC wireless spectrum auctions established an elaborate system of bidding credits and other incentives to promote small business and minority participation.⁸ In order to ensure that auctions of

⁶ NPRM, at ¶ 4.

⁷ Dissenting Statement of Commissioner Mignon L. Clyburn at 1. This figure may be even lower if some businesses took alternate numbers in light of mutually exclusive numbers being unavailable for assignment.

⁸ Congress explicitly granted the FCC the authority to auction wireless spectrum through Section 309(j) of the Communications Act. 47 U.S.C. § 309(j). Under 47 U.S.C. § 309(j)(4)(D), Congress required the FCC to “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to

numbering resources remain “equitable” as required by statute, the FCC would need to consider whether similar methods would be warranted here to avoid disadvantaging smaller participants. However, there is very little information in the record either about what types of challenges smaller entities may face to remain competitive in an auction environment or how to resolve them.⁹ It would be ill-advised to proceed with an auction assignment process until there is a fully developed record on this issue to ensure that any auction satisfies the statutory mandate of being “equitable.”¹⁰

As part of assigning toll-free numbers by auction, the NPRM also questions whether it would be appropriate to allow a secondary numbering market.¹¹ A secondary numbering market stands to incent number hoarding and trafficking and encourage speculation as RespOrgs or their customers may attempt to obtain and hold on to numbers that are valuable or expected to become more valuable over time. Because numbers are a resource with limited supply, it is especially concerning to encourage their overuse and inefficiency by ascribing a value to them in a secondary marketplace. This is especially true as the supply of the 8XX resource becomes more

participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures[.]”

The NPRM fails to cite authority explicitly allowing the FCC to auction numbering resources. While Section 251 requires numbers to be made available on an equitable basis, it is not an explicit grant of auction authority.

⁹ The FCC has been struggling for the past two decades to achieve the right balance of incentives to promote meaningful “designated entity” participation in spectrum auctions and safeguards to prevent abuse of those incentives. *See, e.g., Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities Through Incentive Auctions; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, et al.*, WT Docket No. 14-170, GN Docket No. 12-268, WT Docket No. 05-211, Report and Order, Order on Reconsideration of the First Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015).

¹⁰ 47 U.S.C. § 251(e)(1) (“The Commission shall ... make such numbers available on an equitable basis.”).

¹¹ NPRM, at ¶¶ 30-33.

depleted over time, which may prompt the need for a new non-8XX toll-free NPA to be opened. Instead, requiring entities to put numbers into use within a reasonable time not only helps ensure that numbers are used efficiently, but it avoids the perverse incentives to hoard and warehouse numbers that a secondary market may create.

While the limited supply of numbers creates potential for abuse in a free market environment, the essential nature of numbers heightens these concerns, particularly if auctions come to be used more extensively to allocate numbering resources. To be clear, the NPRM is only considering using auctions for toll-free number assignment. But it is foreseeable that, if toll-free number auctions are allowed, additional numbering auctions may be authorized in the future. And more entities may seek to obtain and hold onto numbering resources if there is a way to profit from them.

Toll-free numbers are essential for entities to conduct business; there is no reasonable substitute for them. Open access to these and all numbers must be preserved. Treating numbers as a revenue source¹² and using auctions to assign them could, if not closely monitored, compromise parties' access to numbers while also triggering larger policy considerations on number assignment generally. "High-demand" numbers are not limited to the toll-free arena, they exist in all NPAs. Using "high demand" numbers as the basis to justify an auction may spark interest in allocating other numbering resources by auction, which, in turn, may further expand the secondary market and risk inefficiencies. If the FCC concludes to move forward with auctions, it will need to exercise caution to ensure it does not inadvertently create undesirable barriers to market entry and increase costs, all to the detriment of consumers.

¹² At this stage, there is very little information about how much revenue any auction of numbering resources would yield and what an appropriate use of those proceeds would be.

In light of these concerns, combined with the fact that the existing assignment process is generally working well, the FCC should not pursue an auction at this time. Rather, if there is concern that existing rules are inadequate to promote efficient use of numbering resources, they should be modified or more strictly enforced to better curtail bad actors. These steps will ensure that numbers are used efficiently and remain available and accessible to those that need them, without the harms described above.

III. IF THE FCC MOVES FORWARD WITH AN AUCTION, ANY AUCTION SHOULD BE LIMITED IN SCOPE AND CONDUCTED ON A TRIAL BASIS ONLY.

If, despite the concerns relayed above, the FCC proceeds with an auction, any auction should be limited in scope and conducted on a trial basis so there is opportunity to gain experience with this new methodology. Any trial auction should be limited, at most, to the 17,000 toll-free numbers with mutually exclusive applications. The trial auction should be conducted by appropriate industry groups such as Somos.¹³ To ensure that numbers distributed by auction are not hoarded or warehoused, there should be a requirement that any numbers obtained by auction are put into use within a reasonable time. Today it is required that any RespOrg requesting a toll-free number already have a customer request for the number. This requirement should be maintained in order to prevent speculation and avoid inflating the value of numbering resources. Any numbers not put into use should be returned to the pool. During the trial, rules prohibiting brokering, warehousing and hoarding numbering resources should remain in place so that the trial may be adequately evaluated without the influence of other variables.

¹³ The NPRM also questions whether it would be appropriate to make Somos's financial information more transparent. NPRM, at ¶ 43. CenturyLink agrees that it would be beneficial to have greater transparency, particularly with respect to transactions between Somos and its affiliates, to ensure administration is fair and that the tariffed rates are reasonable.

After any trial, there should be a review seeking input from interested parties to assess lessons learned and determine an appropriate path for moving forward.

IV. CONCLUSION.

The current numbering allocation methodology works well for the vast majority of cases. Given the harms and inefficiencies that could result from an auction, as well as the numerous issues that have not yet been fully vetted to ensure that an auction would be “equitable” as required by statute, CenturyLink believes it is premature to move forward with drastic changes to toll-free number assignment as proposed in the NPRM. If the FCC concludes to move forward despite these concerns, CenturyLink urges the FCC to conduct a limited auction of mutually exclusive toll-free numbers as a trial so interested parties may further study the impacts and effectiveness of this new allocation method.

Respectfully submitted,

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