

# Vanity International

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November 13, 2017

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room TW-A325  
Washington, D.C. 20554

Re: CC Docket No. 95-155. In the matter of Toll Free Service Access Codes, Toll Free Assignment Modernization, filed Nov. 13. Adding to 17-192, as advised

On behalf of the Association of Toll Free Professionals (ATFP), I hereby submit comments regarding the above-captioned matter:

## Comments of ATFP

Members and associates of ATF Professionals hold many of the exclusive-by-market vanity toll-free programs in existence today and have decades of toll-free experience. Programs such as 1-800-Home-Care, 1-800-Pavement, 1-800-Injured, 1-800-800-Cars, 1-800-Laywers, and 1-800-Attorney are examples of exclusive-by-market licensing.

We fully support the Commission's effort to modernize the assignment of toll-free numbers using an off-line process to make number grants more equitable. This Modernization and, most urgently, the elimination of undue regulations on Direct Transfers, will unleash market forces and empower human interaction in a digital world. First, though, allow me to highlight some subtle, but key insights:

**Value is Not Intrinsic in "Vanity Numbers."** It's been over 60 years since phone numbers have included letters, like the famous hotel number, Pennsylvania-6-5000,

now 212-726-5000. Courts have ruled<sup>1</sup> that even registered trademarks are independent from the numbers themselves, “*even where one possible alphanumeric translation*” is a registered mark, i.e. 1-800-Mercedes. Rather, all value is created through *use* by the advertiser, thus, privately created by the free market. The vanity overlay is but a mnemonic device, one that was once seriously threatened by the popularity of the Blackberry phone, which had remapped the dial pad.

**TFN’s are like IP addresses, not Internet domains.** Numbers connect phones over the PSTN, just as IPv4 addresses allow users to access computers on the Internet. There are both in a fixed format. This is why a vast majority of 833 numbers, and toll-free numbers in general, have zero demand beyond the utility of connection. The very few, maybe 2% of all toll-free numbers are either easy-to-dial or of have potential mnemonic value. Internet domains map to IPs addresses and are listed in a database. Vanity numbers map to TFNs, but only live in the mind.

**Direct Transfers are The Essence of a Free Market.** The genesis of a draconian interpretation of Direct Transfers was made on December 6, 2000 in a letter<sup>2</sup> to Michael Wade, then President of DSMI. The Commission asserted that numbers could no longer be transferred from subscriber to subscriber, and must be put spare. There had been reports that some rogue RespOrgs were unilaterally reassigning numbers “*without the subscriber’s knowledge.*” In contrast to this overreach, Direct Transfers are when

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<sup>1</sup> In *Mercedes-Benz, Inc. vs. Donald Bloom and MBZ Communications* the court ruled ““We thus conclude that the licensing of a toll-free telephone number, without more, is not a “use” within the meaning of the Lanham Act, even where one possible alphanumeric translation of such number might spell-out a protected mark.

<sup>2</sup> <https://ecfsapi.fcc.gov/file/6512559965.pdf>

working numbers are transferred between two *willing* subscribers, or to an agent, as outlined in the Alliance for Telecommunications Industry Solution's (ATIS) petition.

Direct Transfers have no impact on the exhaust of the spare pool.

Clarifying this anti-competitive interpretation is the lynch pin to modernizing toll-free as this has held the free market at bay for over 15 years now. ATIS spelled out the clarifying language in their August 18, 2011 petition and in their February 21, 2002 letter to the Commission. ATIS membership includes the major carriers AT&T, Verizon, Century Link, major corporations like Facebook, Oracle, and Microsoft, and small businesses. The entire industry regularly performs Direct Transfers out of business necessity.

**Stability is Paramount.** There have been millions of numbers in the spare pool since 1993. There are currently 13.9 million spare numbers with a depletion rate of around 648,409/year, averaged over the past two years.

**Agency and 2-Party Consent.** It is essential to understand that the TFNA does not have any customer data nor does it validate or approve transfers. Commercial telecommunication services can involve many parties and several levels of agency, such that the billing customer is often not the rightful subscriber. When TFN's are transferred, a bill copy alone is meaningless, as approvals must often be secured from multiple parties beginning with the releasing RespOrg.

## DISCUSSION

**We propose expanding the existing toll-free number assignment rule to permit use of an auction methodology. Also, if any commenters assert that an auction approach is inequitable, they should clearly explain why an auction approach would be inequitable, as well as how the current means of assignment, or some other means, would be more equitable.**

We believe an auction will raise a few million dollars and bring visibility to toll-free.

**We also seek comment on conducting a single round, sealed-bid Vickrey auction for the roughly 17,000 numbers set aside. Other auction design.**

The single-round, sealed-bid Vickrey auction is a suitable format, as it requires minimum involvement and can be tabulated by a trusted 3<sup>rd</sup> party.

**We propose— and seek comment on— revising our rules to promote development of a secondary market for toll free numbers.**

The commission must remove the any suggestion that Direct Transfers are prohibited, as outlined in the ATIS petition.<sup>3</sup> These transfers are done every day as a business reality. For example, when a business simply moves their number to a call center, they are going to be releasing their number onto the call center's account who, in turn, may release it to a reseller's account at the Carrier. The apparent Customer of Record would then be the reseller, but they are only acting as an indirect agent for the rightful subscriber. Each of these steps require a Transfer of Service Agreement, so that the subscriber has evidence of assignment to their agent.

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<sup>3</sup> <https://ecfsapi.fcc.gov/file/7021705564.pdf>

In other instances, where companies merge, purchase assets, or spinoff brands, all parties have the expectation that all rights—including TFN subscriptions rights--- go along with the purchase. No one in our free market is holding out TFN subscriptions as some special, untransferable privilege. Yet, the effect of this draconian interpretation is to cast a dark cloud over any and all business transactions that involve Direct Transfers. Clarifying the legality of Direct Transfers will unleash the secondary market, while maintaining stability.

On the commercial side, the only tangible effect has been for carriers to add a disclaimer. For example, here is language off the AT&T<sup>4</sup> website. You'll note that they now have a disclaimer<sup>5</sup>, but still perform "Transfer of Ownership"—or why would the "Transfer of Service Agreement" exist?

**Transfer of Ownership** -- *Service, including any associated telephone numbers, may be transferred from Customer to another party only to the extent permitted by applicable laws, rules and regulations, and if both AT&T and Customer consent to the transfer, the proposed new customer satisfies the AT&T eligibility criteria for the Service and any AT&T deposit conditions, and both the current Customer and proposed new customer sign AT&T's specified Transfer of Service Agreement form. The AT&T Transfer of Service Agreement may require the new customer to assume all of the current customer's obligations and the current Customer to remain jointly and severally liable for any obligations relating to the pre-transfer period.*

On the government side, the transfer of 1-800-US-Reward<sup>6</sup> nicely illustrates the absurdity and the lavish legal cost required to submit a petition, where two *willing* parties could have

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<sup>4</sup> [serviceguidenew.att.com/sfc/servlet.shepherd/version/.../068C0000000WcqxlAC](http://serviceguidenew.att.com/sfc/servlet.shepherd/version/.../068C0000000WcqxlAC) or Google the words from the service guide. It's an Excel download.

<sup>5</sup> The AT&T Transfer of Service Agreement, circa 2000, had no such disclaimer

<sup>6</sup> <https://ecfsapi.fcc.gov/file/10505220125122/US%20Department%20of%20State%20Petition%20for%20Permanent%20Reassignment%20of%20the%20Toll-Free%20Number%201800USREWARD%20-5MAY2017.pdf>

simply done a Direct Transfer. It's only because the Department of State was involved that they went to such lengths as to formally ask for the Commission's permission. In a free market, Direct Transfers are done in 15 minutes by a cooperating RespOrg and validated by 2-Party Consent.

**Parties who want particular toll free numbers often will have a better opportunity of acquiring those numbers, albeit for a price, in an auction than under the Commission's current rule**

Yes, although this may put 833 numbers out of reach to many small business entities. Take, for example, the top 10 numbers that were requested by 65 or more RespOrgs.<sup>7</sup> You can be sure that over 90% of those requesters do not have the means to compete for those numbers at auction and, therefore, are effectively barred from any hope of securing them. If this is an inequity, it comes simply by imposing an auction itself.

**If we allow for a secondary market for toll free numbers, it would be inequitable for a RespOrg or subscriber to get a valuable public resource for free, but then later be able to profit from it even when others would have paid for it initially.**

This is a misnomer. Value is *not* intrinsic in the numbers themselves, but in the creation of a mnemonic overlay and/or building a business around it. 1-800-Flowers, for instance, is a publicly traded corporation with employees, trademarks, and market capital. Value was built over many years through use, not ordained through assignment. Where is the value in the digits 1-800-356-9377? Indeed, 1-800-Flowers is also supported by 1-800-350-9377, the “zero misdial,” which connects callers who might dial a “0” in place of the letter “o.”

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<sup>7</sup> [https://ecfsapi.fcc.gov/file/10831146032255/833%20Ex%20Parte%20\(FNL\).pdf](https://ecfsapi.fcc.gov/file/10831146032255/833%20Ex%20Parte%20(FNL).pdf)

Beyond value creation, some subscribers will value certain numbers more than others. This the free market at work. Land has value now, but just a few generations back it too was *free*. So what if some little plumber gets 833-Plumber for free? Let's celebrate that. He's "won the lottery!"

Only subscribers can decide the highest and best use for this and other TFNs. A free market will flourish, while maintaining network stability, because the vast majority of numbers, well over 98% are just like IP addressing. Useful, but not appropriate for development.

**If subscribers and RespOrgs are required to pay for toll free numbers, they are more likely to acquire only the numbers they or their customers need; they will have no incentive to acquire numbers beyond those needed. Thus, we believe that a toll free number auction will help limit exhaust of toll free numbers and further the public interest. We seek comment on our analysis.**

We don't believe this will have any effect on the pool as a whole, as 98% of all numbers are just numbers. They're *free* now and that's why 13.9 million numbers are readily available from the spare pool. Rather, the nominal cost allocated by Somos is sufficient to ensure RespOrgs only activate the numbers they need.

**We further seek comment on other advantages or disadvantages of allowing package bids.**

Packaged bids would disadvantage small businesses who just want the one number they asked for.

**We seek comment on whether a reserve price should be imposed in the auction, and generally on the potential advantages and disadvantages of reserve prices in an auction of toll-free numbers.**

No reserve is warranted. Any of the set-aside numbers that go unclaimed will surely be added to the spare pool and made available for free.

**We propose to allow only RespOrgs to bid in an auction.**

Yes. RespOrgs are the only ones in a position to vet bidders and minimize fraud. Further, this makes bid collection uniform and efficient, as RespOrgs will consolidate and submit to Somos in one file.

**Should we designate the TFNA as the auctioneer?**

Yes. A sealed-bid Vickrey is simple enough to be sorted in a spread sheet and quickly announced.

**Should we consider including subscriber information in the TFNA database?**

Absolutely not. Commercial toll-free has layers of agency and requires the security of 2-Party Consent to validate and approve transfers. Somos only *facilitates* the approvals and, as neutral administrator, should not be put in a position to make any decisions and, therefore, forced to assume liability for bad or misinformed judgements.

Any effort to compel user data into the TFNA database will be met with resistance, 1) because carriers don't want to risk sharing customer data with competitors, 2) the RespOrgs will never get it right, and, 3) if compelled to do so, they'll simply hide real customer data by listing a privacy agent. That end user number discussed above, the one that moved to a call center, would



appear on the resellers account at the carrier level—despite the fact that the reseller is not the authorized subscriber, but only the agent of an agent.

**Consistent with the market-based approach for assigning mutually exclusive toll free numbers, we seek comment on revising our current rules to promote development of a secondary market for toll free numbers generally.**

The entire industry has been in alignment with updating the misinterpretation of Direct Transfers since 2002 Michael Wade Letter. This is the key to an open market. It's also in the public interest to drop the broker/hording rule, which has had a chilling effect on the free market.

**Would the TFNA need to develop an online system to record any reassignments in the secondary market?**

No. The current system of 2-Party Consent provides checks against reassignment fraud, as the releasing carrier will not release without internal validations, as only they have access to internal, privacy-protected validations. The TFNA has no way to validate any transactions, so this is best done by private sector.

**We seek comment on whether certain desirable toll-free numbers necessary to promote health, safety, education, and other public interest goals should be set aside for use, without cost, by government (federal, state, local and Tribal) agencies as well as by non-profit health, safety, education, or other non-profit public interest organizations.**

Absolutely not. Only government agencies should have the privilege of bypassing normal assignment—and only then once the public has had an opportunity to object. This is, in effect, an exercise of eminent domain and should never be used to favor private non-profits over general

assignment. Were such incentives to be put in place, all kinds of non-profits would suddenly spring up solely to secure numbers, like a *Lawyers Guild* claiming 8xx-Lawyers, a *Flowers Think-Tank* claiming 8xx-Flowers, and surely a *222 Foundation* claiming 822-222-2222.

Rather, the free market will come to the aid of private non-profits. Some years back, for instance, we secured 888-SD-Rescue<sup>8</sup> for the San Diego Rescue Mission. The subscriber who generously donated this number was compensated with a tax-deductible donation from the non-profit.

Respectfully submitted,

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<sup>8</sup> <http://www.sdrescue.org/contact-us/>