

Before the FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of:

Toll Free Assignment Modernization  
Toll Free Service Access Codes

WC Docket No. 17-192  
CC Docket No. 95-155

RESPONSE TO COMMENTS OF 1-800-CONTACTS, INC.

November 22, 2017

In an earlier comment regarding the Notice of Proposed Rulemaking in Dockets 17-192 and 95-155, I'd expressed concern that any auction process which undermines the existing protections on hoarding, brokering and warehousing toll-free numbers would create a proprietary interest in telephone numbers – something which has been unprecedented in years of telecommunications policy – harming small business by limiting access to the most valuable numbers to a privileged few willing to pay high premiums. Instead of belonging to the network (as they do now), these identifiers would belong to the highest bidder. Many would fall victim to schemes not unlike “ticket scalping”, where the most aggressively bidding buyers are not intending to provide useful service to the public but only stockpile and resell the numbers for extortionate and unearned profits. The ongoing issues with shared-use companies and fax-to-Internet vendors claiming proprietary ownership interest in numbers which should belong to their clients would also continue or expand unabated.

Upon reviewing the submission made by counsel for 1-800 CONTACTS Inc, my concerns for the implications of creating a proprietary interest in numbers are confirmed if not amplified.

If I understand correctly, 1-800 CONTACTS Inc. has registered four versions of its company logo as trademarks in the US Patent and Trademark Office; these logos all contain the same 1-800 vanity freephone number with minor variation in background and typeface.

The company is now claiming on the basis of an misinterpretation of the Lanham Act that these registrations somehow lawfully entitle it to an arbitrary monopoly on the telephone number 266-8228 in every toll-free area code, including NPA's yet to be introduced, for no reason other than that these seven digits could spell the word "contact". They also appear to believe that registration of trademarked logos exempts the company from established regulations on hoarding and brokering numbers, which clearly state that routing multiple numbers to the same subscriber creates a rebuttable presumption of number hoarding.

Indeed, the company confesses to wilfully tying up the 266-8228 number (which it already legitimately holds in NPA 800) in all of NPA 888, 877, 866 and 844 with the stated intent of repeating this pattern in NPA 833, just to keep it out of the hands of other subscribers. They further admit to tying up 266-8227 ("contacs" instead of "contacts") on no pretext except for a few misdial calls on this number.

1-800 CONTACTS Inc. is neither the worst nor most notable in this regard. The system has been widely abused for years. I've only cited them as an example as their counsel chose to submit a comment in this NPRM which openly confesses to hoarding multiple TFN's to keep a valuable generic phoneword ("contact", or "contacto" en español) out of the hands of new entrants or competitors.

The only reason why this company is not hoarding the number in NPA 855 is that a Philadelphia misdial marketer, using multiple captive resporgs to hoard and warehouse millions of toll-free numbers, grabbed +1-855-CONTACT first. That abuse has gone on unchecked for years. This means no "contact" numbers are available to any new entrant in any toll-free area code anywhere in the NANP.

1-800 CONTACTS Inc. would also have its self-proclaimed monopoly on 266-8228 extend also to Canada and the twenty North American Numbering Plan countries in the Caribbean – even though the company has no tangible presence in these nations and no lawful or equitable right to a monopoly on "contact" there.

Their counsel further attempts to justify its stance by boasting that 1-800 CONTACTS Inc. is tying up a hundred and fifty Internet domain names. They would believe that this misuse of DNS resources (which is not illegal, but which is contrary to the best interests of the network as a whole) somehow confers a corresponding proprietary right in the freephone domain. It does not.

Among these registrations are domains like “1800contactssucks.com”, acquired not to provide legitimate service to consumers but only to render the names unavailable to consumer complaint websites. This, sadly, is typical of the attitude of large American corporations to anyone who opposes them, including their own dissatisfied consumers. The action speaks for itself.

The words “contact” in English, « contact » en français and “contacto” en español are generic. Their origins long predate the fabrication or sale of “contact lenses” by opticians in any country and apply in many fields of endeavour.

The normal practice by trademark registrars in most countries is to require, when a name contains a generic or descriptive term as a component element, that registrants expressly disclaim proprietary interest in the generic term. For instance, the Canadian Intellectual Property Office may grant Contact North (Contact Nord) the trademark “Emerging Technologies Series” (« La série des technologies naissantes ») on the condition that they disclaim any proprietary control of the word SERIES apart from the registered mark.

A trademark applies only to one field or domain of practice in one country. Apple Auto Glass Inc. would not inherently be entitled to shut down Apple Computer Inc., for instance. (Apple Computer infringing the “Apple Records” mark, which belonged to the Beatles’ record label, is more complex if the computer maker were to branch out into MP3 players – a clearly related domain to phonograph records. Nonetheless, “Eve” from the Book of Genesis had the “apple” name first.)

More than eighty currently-active Canadian trademarks and more than five hundred active US trademarks contain the generic term “contact” in the name. Countless more small businesses are using trademarks (established by actually using the name) which are not on the roll as “registered trademarks” in any nation. These bear the “TM” designation instead of the distinctive circle-“R”. A search in all jurisdictions for incorporations with the generic term “contact” in the name or registration for sole proprietorships, partnerships or numbered company “DBA” listings would inevitably find more uses.

Any proposal which would allow 1-800-Contacts Inc. to claim an exclusive or proprietary interest in the generic term would hamstring all of these hypothetical uses of “contact” as collateral damage:

- 1-888-CONTACT-SPORTS
- 1-877-CONTACT-CEMENT
- 1-866-CONTACTOR-RELAYS
- 1-844-CONTACT-PRINTS
- 1-833-CONTACTEZ-NOUS (aka 1-833-CONTACT-US)

A few of the existing, competing registrations for “contact”-related trademarks do have public policy implications. For instance:

- The *National Motor Vehicle Emergency Contact Registry* was created as an expansion of “Sara’s Law”, which originated in New Jersey for motorists to voluntarily provide contact information to next of kin as part of a motorcar registration. This information is used to notify loved ones if the motorist were severely insured or hospitalised due to a collision.
- *Contact North* (« *Contact Nord* ») was created by (nominally) “Her Majesty Queen Elizabeth II in right of the Province of Ontario” to connect Northern Ontario students to distance education programmes. Northern Ontario is vast – one does not drive across the entire province in a single day. A freephone number would be a necessity to cover this wide area of NPA 705 and 807.

None of these have any tangible connection to contact lenses but all stand to be adversely impacted by any process giving proprietary ownership of 266-8228 (and, by extension, the generic phoneword “contact”) to one firm NANP-wide.

Contested numbers need to be issued one-per-subscriber, not sold to the highest bidder or monopolised as proprietary by the corporation with the shrillest, most aggressive legal counsel, if they are to serve the largest number of real end users.

Indeed, the purpose of every working number in the North American Numbering Plan is to contact someone, somewhere. In telephony, that’s as generic as it gets.