

Vanity International

Participating RespOrg

PO Box 2004

Del Mar, CA 92014

800-438-8264 858-792-8888 Fax

December 6, 2017

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

Re: Docket 17-192, CC Docket No. 95-155. In the matter of Toll Free Service Access Codes, Toll Free Assignment Modernization, filed December 6, 2017.

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

Reply 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 feel the need to come to the defense of the Commission's NPRM regarding Toll Free Number Assignment Modernization.

In reading the comments¹ of 1-800-Contacts, Inc., you would think the Commission is stunningly uninformed and about to auction off their private assets and countless other *"numbering resources that are registered and protected by trademark law,"* all to the highest bidder. Nothing could be further from the truth, as trademark holders have no right of priority, much less exclusive assignment, of network addressing.

¹<https://ecfsapi.fcc.gov/file/111493108806/1800Contacts%20Comments%20on%20FCC%20NPRM%2011%2013%202017%20final.pdf>

In our reply comments, we will explore this misperception and assert that Direct Transfers *must* be allowed along with lifting the broker and hoarding rules on Subscribers:

- We will suggest an analogy where “vanity numbers” parallel private boats in public harbors— where 100% of any value is created and owned by the private enterprise, not derived from the public resource.
- We will illustrate that trademarks are not intrinsic in toll-free numbers and the Lanham Act does not apply.
- Through a brief history, we will show how Commission Rules have *devolved* over time, always in response to bad actions by carriers.
- We will show how these devolving rules have had a chilling effect on the very subscribers they were designed to protect; destroying private value and dampening the free market.
- We will assert that Direct Transfers have no effect on the spare pool and must be allowed; they are done *every day* as a business reality, despite this on-going cloud of prohibition.
- We will remind the Commission, when faced with this very business reality itself, it required— indeed “*relied on*” — the release of a toll-free number for a fee of “*reasonable cost*,” as detailed in the little-known Footnote #5.
- We will assert that the Commission and Somos should never be involved as depository for subscriber data or Direct Transfers, as toll-free transactions are far too complex— masking the rightful subscribers under many levels of agency, white labeling, and mandated data privacy.

- We will appeal to the Commission to retain warehousing rules, while allowing the free exchange of numbers among subscribers.

We submit these comments today, December 6, 2017, on the 17th anniversary of the infamous Michael Wade letter,² a directive that has hung like a dark cloud over American enterprise and must be removed. No “modernization” is more urgent, more significant than removing this “*anti-competitive interpretation*”³ on the Direct Transfer of toll-free numbers.

In addition, we assert that Direct Transfers have *no effect* on the spare pool— as the numbers exchanged between Subscribers are already assigned— and that the Commission must lift the stigma that Subscribers are somehow engaged in unlawful “brokering” and “hoarding” simply because their business endeavors require the acquisition or release of toll-free numbers.

The Analogy: Private Boats in Public Harbors

A toll-free number is just a numerical network address on the PSTN— like an IP address on the Internet— and there’s no equivalence with trademarks. First, though, allow us to suggest an analogy that may help crystalize the relation of toll free numbers, a public resource, with trademarks and other private assets.

Imagine a vast public harbor with private boats. The public harbor is where toll-free numbers, the *public slips*, are assigned to private boat owners, for their exclusive use, so long as they pay⁴ their monthly dues. In this analog, the carriers/RespOrgs act as independent harbor masters and the Commission as City Hall.

The private boat owners independently christen their boats with names and may register those names as trademarks with the USPTO, hire employees, provide lavish accommodations, and, in short, *privately construct* whatever they believe will attract a following.

The only difference between private boats in actual public harbors is that a few slips— less than 2%— happen to have memorable addressing. In fact, clever boat owners often choose harbor slips based on the fact they can map their boat’s christened name to its numeric location.

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

³ Comments of ATFP, <https://ecfsapi.fcc.gov/file/1114216544580/FCC.Comments.pdf>

⁴ After a 4-month disconnect for non-payment, a toll-free number is returned to the spare pool.

That is to say, 1-800-Flowers (the private enterprise) is located at 800-356-8387 (the public resource), or in harbor speak, it's in harbor 800, on pier 356, in slip 8387. If you know the name, you know the address. This is the essence of vanity toll-free.

While any boat could be moored at 800-356-8387, this memory trick helps the boat owner build a massive following, simply because clients and prospects always know where to find the privately-held boat known as "1-800-Flowers" among 7,800,000 other public slips. That's 7.8 million slips! As we all know well, a 10-digit, numerical network address is generally beyond the ability of human recall.

Other, astute boat owners simply seek easy-to-remember slips like 800-800-8000 to help build their following, i.e. you'll find this boat in harbor 800, on pier 800, in slip 8000. Simple. Or, they create musical jingles to aid clients and prospects in recall, or both. Clearly, a *mnemonic device* creates a competitive advantage.

Meanwhile, the rest of the slips (98% of all toll-free numbers), are fungible and stand readily available to host any private boat in need of an assigned slip. There is an abundance of available harbor slips, 13.9 million at last check, so there's no need for waiting-lines or any reason to ration public assignments.

To their clients, private boats quickly become synonymous with their public harbor locations. The harbor is vast and clients are precious so, once a following has been built, it is vital to *stay put* to ensure clients and prospects can continue to find you— even when a private enterprise is built on a goofy public address.

Empire Carpet, for instance, built a mass following in Chicago at 312-588-2300, but faced a dilemma in 1990's when the 312 area code was split into several new area codes. Confused Chicago prospects often mis-dialed and gave up looking for Empire. In response, they bought-out the rights to the matching toll-free number, 800-588-2300, for \$2,500 so this would never happen to them again.

Surely, it's in the public interest for private boat owners to moor wherever they like and to choose their own addressing. Further, a free market would allow, even invite and encourage, the next Empire Carpet and 1-800-Flowers to flourish, and for all boat owners to enjoy the *free exchange* of any slip they prefer, but there's a problem here.

Since December 6, 2000⁵, 17 years ago today, no boat can be moved without losing its slip. The buyers are spooked, so they don't buy private boats. The banks are spooked and won't finance private boats. The boat owners, especially those with multiple boats— think call centers— fear losing slips for *their entire fleet* should even one boat be re-moored. Moreover, no one wants to bring any of this up with City Hall, the Commission, for fear their enforcement division will come after them next!

It's as though the private exchange of a harbor slip now *incriminates* the boat owner, the buyer, and the harbor master making the exchange— as though the public is surely harmed by a simple change of address. God help the post office! Will they come after them next?

This absurd consequence was not the intent of the Commission at the time. It was collateral damage; a conflation of victims with perpetrators, as we shall see. Yet, this single, draconian interpretation has had broad negative effects on the free market for almost two decades. This interpretation is what the Commission “*must remove*,⁶” — the suggestion that Direct Transfers between Subscribers are in anyway unlawful— as this one change “*will unleash the secondary market, while maintaining stability.*”

There are No “Trademark Protected Phone Numbers”

Understandably, companies like 1-800-Contacts, Inc. are confused and conflate the assignment of a public resource they envy— and want for free— with the privately-held trademarks they own.

Yet, there is no equivalence, no truth that the Commission is about to assign “*identical or confusingly similar toll-free numbers to cause consumer confusion or to erode the goodwill of business that consumers have grown to trust.*” Rather, it's the privately-owned, christened name “1-800-Contacts,” that carries 100% of the goodwill and is registered as a trademark; not the network address.

⁵ The Michael Wade Letter which prohibits Direct Transfers and directs toll-free numbers to be put spare.

⁶ Comment of ATFP, <https://ecfsapi.fcc.gov/file/1114216544580/FCC.Comments.pdf>

Jim McCann bought a real company out of bankruptcy, “*really, just to get 1-800-Flowers*,” its trademark, and associated goodwill. Had the network addressing been unassignable and put spare, that demand would have been absurd interference in the rights of both subscribers, buyer and seller and tested in the courts.

A vanity number like 1-800-Flowers (the private asset) is only a mind trick to help clients remember its network address 800-356-8387 (the public resource). While it is essential to secure the numeric sequence “356-8387” if one desires to overlay the word “Flowers,” this doesn’t work in reverse.

Any number of clever users might have built a private enterprise at that public address without any “*consumer confusion*.” For example, 1-800-Flower-Pot, 1-800-Flower-Pro, 1-800-eLowers, 1-800-Floyd-PR, or some gal named “Flo Wesson” all map⁸ to the network address 800-356-8387.

A similar mnemonic trick might have even worked to remember the IP address 35.68.38.7, i.e. Fl.ow.er.s, but letters are not inherent in the digits themselves. It’s the standardized *dial pad* that maps letters to the correct digits— and even then maps multiple letters⁹ to each digit. A QWERTY keyboard is useless in mapping a vanity overlay to a network address, as is the classic Blackberry keyboard that remaps letters on different numbers.

Trademark holders have no claim on the assignment of network addressing (public resources) that can be cleverly used by multiple parties. The Lanham Act only protects consumers from the mis-representation of registered marks when *used* in a confusingly similar manner. It does not award public resources to private enterprise simply because its trademark is one of many spellings that maps to a numerical sequence (See ruling¹⁰ on *1-800-Mercedes*).

⁷ Mr. McCann shares this at the NYC Direct Marketing Conference, 1997

⁸ <http://www.dialabc.com/words/search/index.html?pnum=flowers&dict=american&pad=ext&filter=toos%2Ctails&mtcontinue=Find+Words> or go to dialabc.com /words/search/ and input “flowers” with the settings noted.

⁹ Several word phrases can often be created from the same digits. For example, 800-233-7377 spells “beepers,” but also “address.” 800-466-3562 spells “home-loan,” but also “good-jobs.”

¹⁰ <http://caselaw.findlaw.com/us-8th-circuit/1362071.html>

Trademarks are intrinsic in Domains, not phone numbers

In contrast, the 1999 Anti-Cybersquatting Consumer Protection Act gives remedy to trademark holders— often common-law holders— for mere possession of an Internet domain that includes trademarks, where no such remedy exists on network addressing, either IP addressing on the internet or toll-free assignments on the phone network, nor ever will, as numerical digits can *never* contain trademarks.

Trademarks are intrinsic in Internet domains themselves, say IBM-Shop.Com, where trademarks can only appear in vanity numbers when promoting the mnemonic overlay. Mere assignment, possession or use of 1-800-426-7467, is irrelevant, where advertising 1-800-IBM-Shop to suggest an unauthorized association with IBM would be actionable.

American Airlines, Inc. v. 1-800-A-M-E-R-I-C-A-N Corp¹¹ was filed, and could only be filed, after the yellow page ad published. The subsequent injunction barred “*any use*” of the telephone number 1-800-263-7422 under the heading “*Airline Companies*” (or *substantially identical*),” after the defendant listed “*1-800-A-M-E-R-I-C-A-N as that of an airline company in the yellow pages.*”

Even a famous mark affords AT&T, for instance, no claim over phone numbers that contain the sequence “288.” Such exclusivity would be as absurd as directing the post office to only issue the street address “288 Main Street” to AT&T.

Finally, to further illustrate this fact, Empire Carpet has a trademark registration¹² for the toll-free number “800-588-2300” from 2007. Yet, when they went to register “Empire Today 800-588-22300¹³” in 2014 they were directed to *disclaim their own mark*¹⁴ as “*merely informational.*” Empire expressly abandoned this effort, no doubt to avoid casting doubt that this sequence of digits, through use with a jingle, had acquired secondary meaning.

1-800-Contacts, Inc. is clearly unaware of these essential distinctions. They boast of “*150 domain name registrations that incorporate variation of our trademark, reflecting our efforts to*

¹¹ No. 85 C 4499. United States District Court, N.D. Illinois, E.D., November 4, 1985.

¹² Serial Number 77357379 Filing Date December 20, 2007

¹³ Serial Number 86199426, Filing Date February 20, 2014

¹⁴ Empire was told, “*Applicant must disclaim the wording “800-588-2300” because it is merely informational and constitutes a common term that would ordinarily be used in applicant’s particular trade or industry and does not function as a trademark or service mark to indicate the source of applicant’s goods and/or services and to identify and distinguish them from others.*”

secure the brand against consumer confusion caused by similar names” including 1888contacts.com and boasted of how “unaided awareness” is around 45 percent.

Yet, as of today, December 6, 2017, 1-800-Contacts, Inc. has no domain registrations to protect their purported “*trademark-protected toll-free telephone numbers*”— 1-800-266-8228.com or 800-266-8228.com, 8002668228.com, 18002668228.com— nor would anyone ever associate the numeric digits (8002668228) with their trademark.

Why? Because their own network address is neither protected by law nor would the use of similar toll-free number, say 833-266-8228, confuse anyone. No consumer sees 1-800-266-8228 and thinks “1-800-Contacts” in unaided recall. It’s only a distinctive vanity overlay, “1-800-Contacts,” that qualifies as a trademark, not their toll-free number. Clearly, toll-free numbers are *independent*¹⁵ of intellectual property and the Lanham Act is irrelevant to their assignment.

Yet, is it not an absolute fact that the company 1-800-Contacts, Inc., its IP, and goodwill are privately owned? Does anyone but 1-800-Contacts rely upon the toll-free number 800-266-8228? Were 1-800-Contacts, Inc. to be sold in an asset sale, does anyone think the Commission could actually prevent the Direct Transfer of 800-266-8228 to a new Subscriber? Would not such an action, in effect, amount to interference in private economic advantage?

Devolution of Commission Rules

At every turn, carrier misbehavior has caused havoc in the once-prominent, toll-free market; rate gouging, phantom reservations, conversion of live subscriber numbers, and more recently, front-running the drop-to-spare process.

Prior to 1993 there was no mechanism that allowed Subscribers to change 800 Service Providers without giving up their toll-free number, as they were assigned in blocks of 10,000 to 800 Service Providers, not on a per-subscriber basis.

That gave carriers, shall we say, leverage to charge high billing rates, often 2x or 3x higher than competition, because Subscribers could not switch away without abandoning their

¹⁵ Comment of ATFP, <https://ecfsapi.fcc.gov/file/1114216544580/FCC.Comments.pdf>

numbers— which, ironically, is precisely the dilemma Subscribers face today when selling their private assets.

Portability was implemented for this precise benefit, to ensure a competitive market free of coercive regulation. Since 1993, Subscribers have been able to move their numbers to more competitive carriers. Indeed, it was portability that inspired¹⁶ Loren Stocker of 1-800-Get-Vanity to begin a career in toll-free branding.

Then, there was a carrier incident in early June 1995, just prior to the opening of the 888 toll-free code. Someone decided that MCI was not going to be the one carrier that ran out of 800 numbers and, in just one week, reserved around 100,000 numbers without any actual subscribers. At the time, this was almost 20% of the remaining 800 toll-free numbers.

In response, there were several emergency actions taken to curb the abuse of MCI and other “harbor masters,” to ensure that 800 numbers would last until the 888 code opening. While MCI denied any wrong-doing, there was a spurt of available numbers just a few months later, as MCI, AT&T and others quietly emptied their warehouses.

While the subsequent NPRM¹⁷ in October 1995 asked about brokering and hoarding, it had a *whole section* dedicated to Warehousing and described the brazen action taken by few carriers as an “*unreasonable practice, and, thus, inconsistent with the public interest.*”

By the time the 2nd Report and Order¹⁸ was issued in April 1997, whole sections were included on “Ownership of Numbers” and “Hoarding and Brokering.” Yet, the rulings were motivated by, and designed for, “*conservation*” and the “*orderly use and allocation of toll free numbers,*” not to restrict the free market or inhibit the private sale of brands or businesses by Subscribers.

The 2nd report and order stated this clearly, “*The Federal Communications Commission (“FCC”) has concluded that hoarding, defined as the acquisition of more toll free numbers than one intends to **use for the provision of toll free service**, as well as the sale of a toll free number by a private entity for a fee, is contrary to the public interest **in the conservation of the scarce***

¹⁶ The moment was a full-page ad in the Wall Street Journal at the dawn of portability that began “Switch to AT&T,” on May 5, 1993, the day the SMS/800 database began operations.

¹⁷ <https://ecfsapi.fcc.gov/file/1513850001.pdf>

¹⁸ <https://ecfsapi.fcc.gov/file/1820580001.pdf>, <https://ecfsapi.fcc.gov/file/1820580002.pdf>

*toll free number resource and contrary to the FCC's responsibility to promote the **orderly use and allocation of toll free numbers***" (emphasis added).

It is our view the intent was clear; to protect the spare pool from self-serving carriers, not to quash free enterprise, i.e. kill boat sales. To leave no doubt, the Ad Hoc 800 Database Committee's Guidelines¹⁹ clearly and explicitly noted that "*The statements (see below) should not be interrupted as inhibiting the sale, brokering, or bartering of 800 Service,*" which includes "*its reserved, active, and assigned 800 Service numbers*" (emphasis added).

The 95-155 2nd Report and Order relied heavily on the June 16, 1996 Industry Guidelines and recommendations of the Ad Hoc 800 Database Committee that the Commission prohibit bad actions by "*RespOrgs and 800 Service Providers,*" not to tie the hands of Subscribers.

The Ad Hoc 800 Database Committee made this distinction crystal clear by stating "**RespOrgs and 800 Service Providers are prohibited** from selling, brokering, bartering, or releasing for a fee (or other consideration) any 800 number." They asserted that "*800 numbers are not to be treated as commodities that can be bought and sold,*" even by a member of the public if that's their "*primary purpose*" (emphasis added).

"However," they went on, "*the 800 End-User Subscriber has the **ultimate right** to control its 800 Service **and its reserved, active, and assigned 800 Service numbers**,*" (emphasis added) in stark contrast to the restrictions placed on "*RespOrgs and 800 Service Providers*" when they have a duty to serve the public.

The relevant section, 2.2.1 from 1996 follows in its entirety:

2.2.1 800 numbers are not to be treated as commodities which can be bought and sold, and no individual or entity is granted a proprietary interest in any 800 number assigned. **Resp Orgs and 800 Service Providers are prohibited** from selling, brokering, bartering, or releasing for a fee (or other consideration) any 800 Number.

¹⁹ <https://ecfsapi.fcc.gov/file/1639220001.pdf>

Reserving, Assigning, or activating (Working) 800 Numbers by Resp Orgs, 800 Service Providers, or Customers for the **primary purpose** of selling, brokering, bartering, or releasing for a fee (or other consideration) that 800 Number is prohibited.

However, the 800 Service **End-User Subscriber has the ultimate right to control its 800 Service, and its reserved, active, or assigned 800 Service Numbers.**

NOTE: For Shared Use 800 or Bundled Service, the Shared Use 800 or Bundled Service Provider is treated as the 800 Service End-User Subscriber, and is responsible to notify its purchasers of these services of this fact.

NOTE: The statements above **should not be interpreted as inhibiting the sale, resale, brokering, or bartering of 800 Service.** (emphasis added)

In effect, while the Commission has clear authority over the initial assignment of toll-free numbers, it's the End-User Subscribers that hold the "*ultimate right*" to control their toll-free numbers, once assigned. This subtle distinction had been lost and set the stage for the overreach that looms over private enterprise today.

The Big Chill

The chill that now hangs over the toll-free market today is due to mischaracterization of clear acts of carrier conversions— "*unlawful number transfers*," done "*without the subscriber's permission*"— as "*direct transfers*," which are not conversions, but the willing exchange of toll-free numbers between Subscribers.

The infamous Michael Wade Letter²⁰ on December 6, 2000 directed the TFNA (now Somos) to force all disconnected numbers to go spare and update its software, "*to ensure that a number in Disconnect status cannot be changed by the managing RespOrg to any status other than Spare Status.*"

But why? The letter stated, "*The Commission's Common Carrier Division has increasingly received reports that toll-free numbers are being unlawfully transferred between*

²⁰ <https://ecfsapi.fcc.gov/file/6512559965.pdf>

*subscribers... These reports typically indicate that numbers are placed in disconnected or suspend status **without the subscriber's permission** and then transferred to other subscribers in contravention of the Commission's toll-free number regulations"* (emphasis added).

Clearly, this language conflated unlawful acts of *theft by carriers*, through conversion, with Direct Transfers. A subsequent letter²¹ on Feb. 2, 2001 further evidenced their confusion when it misstated the Commission's justification as "*the required changes are intended to help preclude **direct transfers** between subscribers* (emphasis added).

The most well-known conversions were the unlawful reassignments of 888-888-8888 by MCI and 1-800-263-7422 (which can be overlaid with "1-800-American") by Sprint. Both were done "*without the subscriber's permission.*" In contrast, a Direct Transfer is number exchange between *consenting* subscribers.

The actions directed in the Michael Wade Letter were never implemented, but left the toll-free market under a cloud of misperception that Direct Transfers— which are a business necessity— were suddenly unlawful and that all toll-free numbers must now be put spare even in the event of a brand, asset, or business sale— or a change²² of agency.

The Commission at the time was unaware of, and did not appreciate, the chilling impact its assertion would have on private enterprise; that regulations "*provide only for numbers to be returned to spare when subscribers no longer use them.*" When Subscribers cannot Direct Transfer their public network address, privately-held asset value is diminished or even destroyed.

In March 2002, the ATIS sponsored SMS/800 Number Administration Committee ("SNAC") asserted²³ that "*transfers of toll-free numbers between subscribers should be allowed*" and stated "*SNAC is seriously concerned that any attempt by the FCC to carve out specific situations in which subscriber-to-subscriber transfers are allowed will result in an incomplete, overly limited list that fails to capture many instances in which there is a legitimate need to effect such a transfer.*"

²¹ <https://ecfsapi.fcc.gov/file/6512559964.pdf>

²² See our example, i.e. carriers often become an "agent of the agent" and have no direct contact with knowledge of the rightful Subscriber, <https://ecfsapi.fcc.gov/file/1114216544580/FCC.Comments.pdf>

²³ <https://ecfsapi.fcc.gov/file/6513079249.pdf>

In their subsequent Petition for Rulemaking²⁴ a decade later, ATIS asked the Commission to explicitly allow Direct Transfers for various reasons, including simply “*legitimate, normal-course-of-business-related transfers.*” Their Petition has lingered and gone unaddressed.

Carrier “Leverage” Returns

A further erosion of Subscriber rights came on July 23, 2010, when the Help Desk announced²⁵ a new policy. The Help Desk (now Somos) no longer ports numbers in “transition” status, so a Subscriber must now seek the express permission²⁶ and release by the existing carrier which, if effect, defeat portability.

Prior to this policy change, a few rogue RespOrgs had been hijacking numbers, via the Help Desk, with falsified Letters of Authorizaton, almost always on the very night numbers were to be spared. Because all disconnected numbers are moved to “transitional” status around 48-hours before going spare, it seemed reasonable this policy would foil hijackings— at least those done during the last 2-days of the 4-month disconnection cycle.

The clear intent was to prevent carriers and RespOrgs from front-running the drop-to-spare process, but this policy change has had an ominous side-effect on Subscribers. Since 2010 the Help Desk no longer helps Subscribers embroiled in billing disputes with their existing carrier under the fiction that, once a number is in “transition” status, “*there is no customer of record.*” The accepted fact, however, is that only the act of sparing a number after the required “4-month lag time” extinguishes the rights of the former subscriber, not the logistical act of clearing the customer administrative data from the database.

Verizon wasted no time and, since 2010, immediately moves all disconnected numbers into this protected transitional status, *on the very first day* of disconnect. AT&T has always done that, and together they both enjoy new privileges. Now, just as in the pre-1993 era, Subscribers can no longer escape from the nation’s two largest carriers with their numbers!

²⁴ <https://ecfsapi.fcc.gov/file/7021705564.pdf>

²⁵ <https://tollfreemarket.com/toll-free-numbers/2010/8/4/dsmi-terminates-portability.html>

²⁶ Once in “transitional” status, only existing carriers can port or reactivate a toll-free number.

The Little-Known Footnote #5

The dark cloud of brokering and hoarding looms because the rules have gone far beyond “*primary purpose*” of brokering unassigned, spare-pool numbers to suggest that *any* Direct Transfer of toll-free numbers qualifies as a crime. Rather, we assert, it is the *destruction* of private value that would be found unlawful, if tested in the courts.

We believe it to be well documented that the Commission’s actions over the last 25 years were *never* motivated by Direct Transfers “*between subscribers*,” but by “*RespOrgs and 800 Service Providers*” pursuing their own gains; rate gouging, phantom reservations, conversion of live subscriber numbers, and most recently, and front-running the drop-to-spare process.

Instinctually, we all know that the FCC has authority over the spare pool but holds no authority over the private exchange of value between subscriber, i.e. the sale of boats. That’s why Direct Transfers are done every day by publicly traded, regulated carriers like AT&T, Verizon, CenturyLink and others, despite these ominous rulings.

Yet, AT&T has no need to defend its “Transfer of Service Agreement,”²⁷ the AT&T form used to exchange numbers between Subscribers that’s still used every day with its added disclaimer. Nor should Verizon or CenturyLink feel any need to defend their “Corp Swaps,” letters written by the former and future subscribers on company letterhead. These actions simply reflect business realities. It’s not the carriers, but the regulations that have gone off the rails.

Even the Commission came face-to-face with the absurdities of its own creation when it, essentially, *slammed* the public address 800-733-2767 (1-800-Red-Cross) from a private party for the politically²⁸ connected Red Cross— and quickly found itself the target of potential legal action.

In finalizing its transfer²⁹ to the Red Cross, the Commission clearly and rightly “*relied on*” the Red Cross to pay the private party “*reasonable costs of relinquishing the number*,” i.e. market value of its goodwill and lost economic advantage as a condition of toll-free number’s

²⁷ See Comments of on AT&T “Transfer of Service” agreement and its language, <https://ecfsapi.fcc.gov/file/1114216544580/FCC.Comments.pdf>

²⁸ Elizabeth Dole was president at the time, wife of Senator Bob Dole

²⁹ <https://ecfsapi.fcc.gov/file/6518461933.pdf> See footnote #5

reassignment. See footnote #5. The boat was sold! Only then did the Commission transfer the slip.

Direct Transfers Must be Allowed

We assert that the Commission has no reason, indeed no authority, to interfere in the on-going economic advantage of private enterprise by prohibiting Direct Transfers between Subscribers. Further, that Direct Transfers have *no effect on the spare pool*— as the numbers exchanged between Subscribers are already assigned.

The Commission must leave no doubt that Direct Transfers are legal and not discouraged, as that, above all, will unleash the free market. We must recognize and acknowledge:

- 1) All created value, including goodwill, is 100% intrinsic to the business, and that;
- 2) Once assigned, a toll-free number is an essential facility to no one but the Subscriber, and that;
- 3) Private assets are damaged, even rendered worthless, when toll-free number assignments cannot be conveyed along with a brand, business, corporation or in other *“legitimate, normal-course-of-business-related transfers.”*

There’s no conflict here. It’s in the public interest to both encourage the creation of private enterprise and permit the direct transfer of the public resource upon which this private value depends, i.e. the toll-free number— and this must scale up and down the business landscape. Direct Transfers cannot merely exist for the benefit of large enterprise.

Even a little furnace repair guy with a random, non-vanity toll-free number on his lone truck, his business cards, and on appliance stickers all over town has the right to sell his goodwill. Appliance stickers, as you know, invite homeowners to call in for future repair work.

It would be abundantly clear to any buyer that 100% of this goodwill would be lost if the toll-free number cannot be transferred along with the asset sale of the business. It should be just as clear to the Commission that this furnace repair guy is selling his goodwill when he Direct Transfers his toll-free number, not selling a public resource.

In conjunction, the Commission needs to lift rules on brokering and this “*rebuttable presumption*” of hoarding which casts a sinister cloud over and Subscriber building an enterprise using toll-free numbers— especially call centers. Call centers are explicitly in the business of “hoarding” numbers and then renting them out. Are they somehow un-American?

Retain Warehousing Rules

Yet, we believe the Commission should retain warehousing restrictions that make the conversion of disconnected numbers “*without the subscriber’s knowledge*” and other forms of self-dealing unlawful. The role of 800 Servicer Providers that serve the public is that of “harbor master.” We can’t allow them to warehouse all the best slips for themselves and then assign, or sell, them to their friends.

The difference between brokering/hoarding and warehousing, is that warehousing involves *unassigned* numbers that would otherwise remain in, or go back to, the spare pool. Once assigned, however, there should be no unreasonable restrictions on Direct Transfers even when “fees” are those involved on the business side of the transaction.

Modernization of Toll Free

So, what to do to modernize the harbor? We don’t need to privatize its operation. We don’t need to meddle in, record sales, or charge fees, for Direct Transfer between owners. We don’t need to jack up the monthly fees, create some convoluted use-license, or charge premiums for the best slips.

Neither the Commission nor Somos, from 10,000 feet up, should *ever* be involved in, or liable for, the daily judgement and operations of the “harbor masters.” The “*RespOrgs and 800 Service Providers*” are the only ones with private access to the chain of agency that includes the rightful subscribers, so let them do their job. It’s complicated and nuanced work but, overall, “*RespOrgs and 800 Service Providers*” have served the public well for the last 25 years with consistent and assured stability. The phones work just fine.

Rather, we need to free the market from the stigma of this one misdirected, overreaching regulation, the prohibition of Direct Transfers and then, simply allow private boat owners to

transfer their public slips— and to stop spooking the banks and buyers with language that suggests that Subscribers are “brokers” or “hoarders.”

Respectfully submitted,

Loren Stocker
TollFreeMarket.com
Founder, Association of Toll Free Professionals
Loren@800.net
1-800-Get-Vanity (800-438-8264)