

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

Comments of Gary Smith

We thank the FCC for giving us this opportunity to comment and we are writing in support of this proposed FCC rule of eliminating all warehousing/brokering/hoarding rules and allowing for an open secondary market to develop. Set forth below are the reasons why the proposed rule should be adopted from the viewpoint of the small and midsize companies which make up the vast majority of businesses that use toll-free numbers and would benefit from the proposed rule that would allow a secondary market to develop for toll-free numbers in accordance with free market principles. Several companies submitted comments recommending that the FCC increase the toll-free number fees and add new restrictions on toll-free numbers. Those comments are contrary to the prevailing public policy of reducing regulation and reducing fees for small and medium sized businesses so that they can compete and grow.

My name is Gary Smith and our firm assists and advises companies with researching and branding new corporate names or ideas for new product/corporate/service names. Prior to offering new name suggestions to clients, we do extensive research including competitive research, checking domain name availability, trademarks, and researching toll-free numbers that would work best for this new company or product/service name. Although our clients may have some difficulty with buying their first choice of a domain name, they are typically able to purchase a domain name from the many small and large resellers in the secondary market for domain names. Of course, a small percentage of domain names on the secondary market are expensive; however, typically we and our clients can find a reasonably priced domain name on the secondary market for their new product/corporate/service name. On the other hand, the main frustration that we and our clients have is with finding a suitable toll-free number that would work for their new product/corporate/service name.

Quite frankly, we and our clients have never understood (and still do not understand) why toll-free numbers can't be as easily purchased as domain names. Over the past thirty years, we have been in contact with many telephone carriers and Resporgs as part of our extensive branding research for our clients, and the carriers and Resporgs have also never understood why there is no secondary market for toll-free numbers as there is for domain names.

Nobody established the secondary market for domain names. The secondary market for domain names developed by itself as there is great demand for domain names in the secondary market and there are no warehousing/brokering/hoarding rules for domain names. It operates efficiently without any regulation. Many successful well-known businesses are based on domains names that were purchased in the secondary market for domain names. In fact, we believe that many of the small and large domain name secondary market players and domain name registrars (many of whom also own, buy, broker and sell domain names in the secondary market in addition to their regular business of registering new domain names) may start buying, brokering and offering toll-free numbers for sale as soon as the FCC repeals the warehousing/brokering/hoarding rules. Offering toll-free numbers for sale would be a perfect fit for those companies as many of those domain name companies in the secondary market offer a full menu of business services that include domain names, incorporation services, trademark registration services and many other marketing/promotion products and services that are desired by companies that are purchasing a domain name for their new product/corporate/service name. In addition, many online companies that specialize in business

related services for start-up companies or specialize in services for established companies that are launching new products and services would be interested in adding toll-free numbers for sale as an additional available business product/service on their website.

If truth be told, warehousing and hoarding is prevalent and recognized in the domain name industry. In 2015, GoDaddy (one of the domain name registrars) acquired the domain portfolios of Marchex (200,000 domain names) and Worldwide Media (70,000 domain names) and currently resells these domain names to the small and medium sized businesses that use their services. The FCC should endorse the same warehousing and hoarding policy for toll-free numbers so that toll-free resellers can market and sell these toll-free numbers to small and medium sized businesses that can best use these toll-free numbers for their sales, advertising and customer support.

Some may argue that it is mistaken to compare toll-free numbers to domain names as toll-free numbers are limited in contrast to domain names which can be of any length and are therefore unlimited; however, the current spare pool of over fourteen million available toll-free numbers clearly demonstrates that there is an adequate supply of available toll-free numbers, and therefore there is no fear of any possible toll-free number exhaust, as we will discuss in length later in our comments.

Summing up: we believe that many companies will start offering toll-free numbers for sale within months if not weeks after the FCC eliminates the warehousing/brokering/hoarding rules and this can be done in accordance with free market concepts without the FCC establishing any new regulations for the secondary market (similar to the domain name secondary market).

Answers to the FCC questions start on the next page.

Answers to the FCC Questions:

FCC questions: Whether there should be a database for potential buyers? Whether the Toll Free Numbering Administrator (TFNA) should keep toll free number subscriber records and whether we should consider including subscriber information in a TFNA database.

As part of our client research for the past thirty years relating to toll-free numbers, in addition to contacting phone carriers and Resporgs, we attempt to call the toll-free numbers and contact the owners of the toll-free numbers to check availability. Although as part of our research, we do reach some very “interesting” businesses by calling the toll-free numbers, we are typically able to eventually reach and speak with approximately 90% of the people at the toll-free numbers that we attempt to call. Our calls to the toll-free numbers results in us either reaching someone live or us leaving a voicemail and eventually speaking to them when they return our voicemails. In contrast to the websites and using the domain name registrant information (WHOIS) which is supposed to have accurate domain name registrant information, we are typically only able to contact approximately 60% of the owners of the domain names websites as approximately 40% of the domain name registrant information (WHOIS) contains false information. And many domain names do not have a working website; accordingly we have no way at all of contacting approximately 30%-40% of the domain name owners.

So here is the answer to the FCC questions: There is absolutely no need to delay this long awaited FCC proposal by attempting to establish a toll-free information registry or toll free number subscriber records, as the practically worthless domain name registrant information (WHOIS) has clearly demonstrated that the registrant information of domain names is mostly false. Furthermore, the fact of the matter is that it is exceptionally easy for any person to get on a phone and DIRECTLY call the toll-free number that you are trying to purchase and speak to them directly without the need for any toll-free subscriber database.

FCC question: What types of information would be needed from the buyer and seller to document a reassignment, whether an online recording system is needed to record reassignments in the secondary market.

This is really easy. (We and our clients have extensive experience with this question and we will now explain how easy this really is.) As the FCC is well aware, there is currently an unofficial secondary market for toll-free numbers. These toll-free numbers can be openly purchased on auction sites such as eBay (in fact, more often than not, eBay has a minimum of 50 - 100 toll-free numbers for sale at any given time) or toll free numbers can be directly purchased from many toll-free number reseller websites on the internet. This disadvantages the smaller to medium sized companies that are adhering to the current FCC rules and not selling the toll-free numbers. Accordingly, getting rid of the warehousing/brokering/hoarding rules will eliminate this disadvantage and foster greater competition. These toll-free numbers sales transactions have been completed for the past 20 - 30 years without any FCC “online recording system” or any FCC requirement that “information would be needed from the buyer and seller to document a reassignment”.

A review of a common toll-free number sales transaction reveals that the system operates efficiently without the burden of extensive paperwork or regulation. The current owner (seller) of the toll-free number contacts their current carrier or Resporg and updates them with the name of the purchaser of the toll-free number and this new owner now gets a new toll-free service account from the current carrier or Resporg. At that point, the new owner of the toll-free number has the choice of whether to stay with that current Resporg/carrier or transfer to a new Resporg/carrier of their choice. The toll-free number sales transaction is now entirely completed. If the new owner of the toll-free number wishes to use a new Resporg/carrier for their toll-free service, there is no need for any new FCC rules as the toll-free system already has a well established system in place that has worked smoothly for the past twenty-five years that allows for the easy transfer of toll-free service from one Resporg/carrier to another Resporg/carrier. In fact, Verizon wrote in their comments: “And, RespOrgs smoothly port numbers between one another, to the benefit of the requesting customer as well as the competing RespOrg.” In summary, there is no need for any new FCC regulations, as currently all toll-free number sales transactions are efficiently completed without any FCC “online recording system” or any FCC requirement that “information would be needed from the buyer and seller to document a reassignment”.

Why SMBs (small and medium-sized business) and ALL start-up companies will considerably benefit when the FCC eliminates the warehousing/brokering/hoarding rules?

Currently, SMBs and ALL start-up companies are at a significant disadvantage as they attempt to compete with larger and long established companies. This is due to the fact that the larger and more established companies already have a very easy to remember perfect 800 number that corresponds to their product/corporate/service name while the SMBs and ALL start-up companies would love to buy an easy to remember 800 number, however up until this time, the FCC warehousing/brokering/hoarding rules do not allow the SMBs and ALL start-up companies to purchase a toll-free phone number. Thus, in effect, the current FCC warehousing/brokering/hoarding rules are clearly stifling competition by favoring the older, larger and more established companies. By eliminating the warehousing/brokering/hoarding rules, the SMBs and ALL start-up companies will then have the ability to call any toll-free number that they wish to purchase and directly contact, negotiate and purchase their desired toll-free number. In addition, as we have seen with domain names, there will be many independent small and medium-sized companies, business service companies, domain name registrars, auction sites (eBay etc.), Internet companies (Amazon, Google etc.) that will be buying, brokering and selling toll-free numbers and at that time, all small businesses will be able to purchase toll-free numbers on the secondary market from these toll-free number reseller sites and be on a level playing field with the larger companies and long established companies.

FCC question: Is there any reason to keep this outdated warehousing/brokering/hoarding rule to prevent toll-free number exhaust?

Of course not. As stated previously, for the past thirty years, the main frustration that we and our clients had and continue to have is with finding a suitable toll-free number that would work for their new product/corporate/service name. We just contacted a carrier and they informed us that Somos uses the US Postal service to mail a weekly report that shows the amount of available toll-free numbers. The Somos report (as of November 2017) stated that there are well over fourteen million available toll-free numbers. Yet, on most occasions we are unable to find from the current spare pool (of over fourteen million available toll-free numbers) suitable toll-free numbers for our clients and we are not allowed to purchase any toll-free numbers currently in use due to the current FCC warehousing/brokering/hoarding rule.

Consequently, there is no concern for toll-free number exhaust, because when the FCC eliminates the warehousing/brokering/hoarding rules, all in-use numbers will become immediately available in the secondary market. In fact, CenturyLink wrote in their comments: “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.” In addition, Vanity International wrote in their comments: “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.” Furthermore, the over fourteen million available toll-free numbers will remain available because to this date, there has not been a run to reserve these fourteen million available toll-free numbers.

In an FCC PowerPoint presentation dated FEBRUARY 26, 2001, Les Selzer, the **FCC Economist** wrote the following: (The bullets below are from the FCC PowerPoint)

- A market-based allocation scheme for toll free numbers could reduce need for detailed regulation and enforcement.
- SECONDARY MARKET - Requires FCC to lift its anti-brokering rules.
- May reduce the need for detailed regulation and enforcement.
- Numbers are transferred to subs with highest and best use.
- Brokering in secondary market could enhance value of numbers to RespOrgs and subs. For example, could promote greater use of shared vanity numbers.
- Defining subs’ property right would protect against unauthorized disconnects and transfers. Enhance value of numbers.
- Could reduce incentive to hold numbers. Recognizing the opportunity cost of numbers encourages number holders to dispose of unused numbers. Incentive is to convert numbers into cash by selling them.
- Legalizing market would level playing field. All could participate in market, not just those willing to break the rules.
- Consistent with pro-market, deregulatory philosophy of Commission/Congress.

Please take a look at the following three recently published articles that clearly explain the significant benefits of the FCC eliminating all warehousing/brokering/hoarding rules, thereby automatically allowing a secondary market for toll-free numbers to develop. We have underlined and placed in bold direct quotations from these three articles.

1. Article published in thehill.com titled “Auctioning toll-free phone numbers the right approach for the FCC” written by Joe Kane, tech policy researcher with the R Street Institute. (<http://thehill.com/opinion/technology/352213-auctioning-toll-free-phone-numbers-the-right-approach-for-the-fcc>) Mr. Kane writes: **“A robust secondary market preserves the efficient outcome...”**
2. Article titled “Toll-Free Assignment Modernization” written by Daniel A. Lyons, Associate Professor of Law at Boston College Law School. (http://www.freestatefoundation.org/images/Toll-Free_Assignment_Modernization_and_the_Triumph_of_Coase_091817.pdf) Professor Lyons writes: **“The right of resale makes it easier for toll-free numbers to flow to their highest and best use.”**
3. Article titled “FCC’s 1-800-AUCTION Makes Economic Sense” written by Charles Hughes, a policy analyst at the Manhattan Institute. (<https://economics21.org/html/fcc’s-1-800-auction-makes-economic-sense-2599.html>) Mr. Hughes writes: **“If, for example, a small flower shop owned the toll-free number that spelled out NETFLIX, it would be simpler to sell the rights to that number to the company that values it more highly. Allowing the secondary market to develop more fully would further improve the efficiency of toll-free number distribution.”**

Summing up: We and our many clients (and as noted in the articles above, many professionals including economists, researchers and professors) are all looking forward to the FCC eliminating its warehousing/brokering/hoarding regulations thus allowing the secondary market to develop. This will create a free market and enhance competition thereby assisting small businesses and start-ups with the ability to finally purchase a great toll-free number for their business and be on a level playing field with the larger companies.