

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FILED/ACCEPTED

AUG 17 2011

Federal Communications Commission  
Office of the Secretary

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In the Matter of: )  
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Amendment of the Commission's Rules to ) RM No. \_\_\_\_\_  
Allow Certain Direct Transfers of Toll-Free )  
Numbers )  
\_\_\_\_\_ )

**PETITION FOR RULEMAKING  
OF THE ALLIANCE FOR TELECOMMUNICATIONS INDUSTRY SOLUTIONS**

Pursuant to Section 1.401 of the Commission's rules,<sup>1</sup> the Alliance for Telecommunications Industry Solutions ("ATIS") respectfully requests that the Commission revise its Part 52 rules to specifically allow for the direct transfer of toll free numbers between users without the numbers first returning to the spare pool under certain limited circumstances. Specifically, ATIS recommends that the Commission revise Sections 52.103, 52.107, and 52.111 of its rules to allow toll free numbers to be transferred directly from one user to another only (1) if the toll free number is mistakenly returned to the spare pool and picked up by another carrier, (2) to correct a fraudulent or unauthorized transfer of a toll free number or inadvertent transfer of a shared use number, or (3) as part of a bona fide merger, acquisition, bankruptcy, or other legitimate normal-course-of-business-related transfer. Adopting the rule revisions proposed herein would be consistent with the Commission's mandate to "ensure the efficient, fair, and orderly allocation of toll free numbers,"<sup>2</sup> would not implicate the policy concerns animating the Commission's prohibitions on warehousing and hoarding of toll free numbers, and would be in the public interest.

<sup>1</sup> 47 C.F.R. § 1.401.

<sup>2</sup> See Toll Free Service Access Codes, *Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-155, 12 FCC Rcd 11162, 111 76 ¶ 18 (1997) ("Toll Free Second Report and Order").

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## **I. INTEREST OF THE PETITIONER**

ATIS is a global standards development and technical planning organization that develops and promotes global technical and operations standards for information, entertainment and communications technologies. ATIS SNAC, one of ATIS' 16 industry committees, identifies, develops and implements the resolution of issues impacting existing toll free products and services and evolving technologies affecting future developments in the toll free industry.

## **II. THE PART 52 RULES CURRENTLY PROHIBIT DIRECT TRANSFERS OF TOLL FREE NUMBERS FROM ONE SUBSCRIBER TO ANOTHER.**

As currently written and interpreted, the Commission's Part 52 rules expressly prohibit the transfer of toll free numbers directly between subscribers without being first returned to the spare pool. The Commission has repeatedly explained that "telephone numbers are a public resource, and neither carriers nor subscribers "own" their telephone numbers."<sup>3</sup> However, while subscribers do not acquire a property interest in their assigned toll free numbers, these numbers often become of fundamental importance to their overall business or other operations. Recently, the Commission reaffirmed that "under the Commission's rules, Responsible Organizations (RespOrgs) may not transfer toll free numbers directly from one entity to another without Commission approval."<sup>4</sup> While ATIS does not disagree with the Commission's interpretation of its rules in that case, as it has explained previously to the Commission, in a few specific situations the industry should be allowed to perform direct transfers of numbers. This request seeks the initiation of a rulemaking proceeding to address some of these situations.

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<sup>3</sup> See, e.g., Transaction Network Services, Inc., TSYS Acquiring Solutions, LLC, and Electronic Payment Systems, LLC, Regarding FCC Jurisdiction and RespOrg Responsibilities to Comply with part 52 of the FCC's Rules and the SMS/800 Tariff Requirements, CC Docket No. 95-155, *Declaratory Ruling*, 26 FCC Rcd 2109, 2111 ¶ 7 (2011) ("TSYS Declaratory Ruling"); Toll Free Service Access Codes, CC Docket No. 95-155, *Fourth Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 9058, 9061, n.14 (1998).

<sup>4</sup> TSYS Declaratory Ruling, 26 FCC Rcd at 2109 ¶ 1 (citing 47 U.S.C. § 251(e); 47 C.F.R. § 52.111).

Part 52 of the Commission's rules and relevant precedents sketch out the framework of how toll free number resources are managed, and outline a specific process through which numbers are assigned to users, activated, suspended, or disconnected.<sup>5</sup> All toll free numbers in the North American Numbering Plan, along with electronic records for those numbers, are contained in the Service Management System Database ("SMS Database").<sup>6</sup> RespOrgs are the entities that search for and reserve toll free numbers on behalf of subscribers, and create and maintain the associated call processing records that are stored in the SMS Database.<sup>7</sup> Toll free subscribers must request a RespOrg to reserve a toll free number from the SMS Database on their behalf.<sup>8</sup>

Toll free numbers that are available for assignment to a subscriber are held in the "spare pool."<sup>9</sup> Under current Commission rules, once a toll free number has been assigned to a subscriber, it cannot be assigned to a different subscriber without first being returned to the spare pool. Under the Commission's "lag time" rule, a number placed in "disconnect status" must go back to the spare pool, and cannot be reassigned or returned directly to working status for a different subscriber.<sup>10</sup> Once placed in the spare pool, toll free numbers are made available to

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<sup>5</sup> See 47 C.F.R. 52.101 *et seq.*

<sup>6</sup> See 47 C.F.R. § 52.101(d); *see also* Toll Free Service Access Codes, *Fifth Report and Order*, CC Docket No. 95-155, 15 FCC Rcd 11939, 11940-41 ¶ 2 (2000) ("Fifth Report and Order").

<sup>7</sup> See Fifth Report and Order, 15 FCC Rcd at 11941 ¶ 3.

<sup>8</sup> See 47 C.F.R. § 52.101(e).

<sup>9</sup> See 47 C.F.R. § 52.103(a)(6).

<sup>10</sup> 47 C.F.R. § 52.103(d); *see also* Letter from L. Charles Keller, Chief, Network Services Division, Common Carrier Bureau, Federal Communications Commission to Michael Wade, President, Database Service Management, Inc., 15 FCC Rcd 24053 (2000) ("Wade Letter").

subscribers only on a first-come, first-served basis, unless otherwise directed by the Commission.<sup>11</sup>

The Commission's rules contain other restrictions on the behavior of RespOrgs and subscribers with respect to toll free numbers. For example RespOrgs are prohibited from "warehousing" toll free numbers, which is defined as "either directly or indirectly through an affiliate, reserv[ing] toll free numbers from the Service Management System database without having an actual toll free subscriber for whom those numbers are being reserved."<sup>12</sup> Similarly, subscribers are prohibited from "hoarding" toll free numbers, which is the acquisition "of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service."<sup>13</sup> Included in the definition of hoarding is "brokering," or "the selling of a toll free number by a private entity for a fee."<sup>14</sup> Bringing together the pieces of this framework, the Commission has interpreted its rules such that "[d]irect transfers of numbers between subscribers contravene the lag time and hoarding rules and violate the 'first come, first served' policy."<sup>15</sup>

### **III. CREATING NEW EXCEPTIONS FOR CERTAIN DIRECT TRANSFERS WOULD SERVE THE PUBLIC INTEREST AND THE COMMISSION'S POLICIES REGARDING TOLL FREE NUMBERS.**

ATIS notes that, under some circumstances, the direct transfer of toll free numbers between users would better serve the policy goals of the Commission's toll free number rules than requiring that the numbers be first returned to the spare pool. The Commission has interpreted the exclusive jurisdiction over numbering issues conferred to it by the Communications Act as requiring it to "ensure the efficient, fair, and orderly allocation of toll

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<sup>11</sup> 47 C.F.R. § 52.111.

<sup>12</sup> 47 C.F.R. § 52.105(a).

<sup>13</sup> 47 C.F.R. § 52.107(a).

<sup>14</sup> *Id.*

<sup>15</sup> Wade Letter, 15 FCC Rcd at 24053.

free numbers.”<sup>16</sup> This policy drove the development of the Commission’s toll free numbering rules.

As toll free numbers are a limited public resource, ensuring the efficient, fair, and orderly allocation of toll free numbers raises concerns about exhaustion of the number supply. Sensitivity to conserving the limited supply of toll free numbers was key to the Commission’s reasoning behind adopting the prohibition on hoarding. As the Commission explained, “[i]f a subscriber refuses to release numbers that are not in use, the pool of available numbers decreases. This will exacerbate toll free number depletion and necessitate the opening of an additional toll free relief code earlier than would be necessary otherwise.”<sup>17</sup> This, in turn, will be time consuming and costly for the industry, and could result in customers being unable to obtain toll free numbers. Brokering was prohibited at the same time, because it was understood that “[b]rokering provides motivation for hoarding and therefore results in quicker exhaustion” of toll free numbers and interferes with their orderly allocation.<sup>18</sup>

ATIS acknowledges the policy underpinnings of the Commission’s toll free number rules. However, in some specific circumstances, this policy would be better served through a limited exception to those rules. ATIS has previously identified three categories of direct transfer of toll free numbers that do not implicate the efficiency and depletion concerns that animate the Commission’s rules governing administration of the shared toll free numbering resource. Those situations include ones in which:

- Toll free numbers are mistakenly returned to the spare pool and picked up by other carriers;
- There are fraudulent or unauthorized transfers of shared use numbers; or

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<sup>16</sup> Toll Free Second Report and Order, 12 FCC Rcd at 11176 ¶ 18.

<sup>17</sup> *Id.*, 12 FCC Rcd at 11189 ¶ 38.

<sup>18</sup> *Id.*

- There are legitimate mergers, acquisitions, bankruptcies, and other business transfers that necessitate transfer of the toll free number.

In each of these cases, allowing a direct transfer of the toll free number would serve the public interest in efficient administration and allocation of toll free numbers. The first two cases are intended to reflect situations in which the toll free numbers were transferred incorrectly away from the rightful subscriber. It is worth noting that the Commission has previously recognized the need for similar flexibility when it indicated that the SMS/800 Help Desk should have “an over-ride capability . . . to correct errors or assist a RespOrg in managing a number” under specific circumstances.<sup>19</sup>

Similarly, while mergers, acquisitions, and business transfers that involve a toll free number are currently technically prohibited under the rules, the SMS/800 Tariff already provides for the transfer of some services to “a court-appointed receiver, trustee or other person acting pursuant to law in bankruptcy.”<sup>20</sup> Moreover, it is not clear that bona fide mergers and acquisitions involving the transfer of a toll free number in connection with the larger business transaction would implicate the rationale for prohibiting brokering. Indeed, the United States Court of Appeals for the Seventh Circuit has suggested that not “every transfer for value is a form of ‘number brokering,’”<sup>21</sup> recognizing that “[m]oving assets to higher and better uses is an important goal of any economic system.”<sup>22</sup> The Seventh Circuit’s reasoning on this point is consistent with the Commission’s goal of ensuring efficient allocation and administration of toll free numbers.<sup>23</sup> As the Seventh Circuit rightly acknowledged, “[d]rawing a line between these

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<sup>19</sup> Wade Letter, 15 FCC Rcd at 24056.

<sup>20</sup> SMS/800 Functions, FCC Tariff No. 1, Sec. 2.1.2(A)(2).

<sup>21</sup> *Jahn v. 1-800-FLOWERS.COM, Inc.*, 284 F.3d 807, 810 (7th Cir. 2002).

<sup>22</sup> *Id.*

<sup>23</sup> *See Toll Free Second Report and Order*, 12 FCC Rcd at 11176 ¶ 18.

normal and lawful transactions and forbidden ‘hoarding’ or ‘number brokering’ [is] a job for the FCC.”<sup>24</sup> This petition is intended to begin that process.

Strict application of the Commission’s prohibition on direct transfers in these cases would actually disserve the Commission’s numbering goals by creating additional cost, delay, and disruption due to the return of the number to the spare pool. As the Commission is aware, for many businesses, changing a toll free number can be an unmanageable burden, taking years and costing large and unpredictable amounts of money. In cases falling into the three categories discussed above, where the return of the number to the spare pool was in error, where a transfer was fraudulent or unauthorized, or where the proposed transfer is part of a larger business transaction, there is little to no concern about hoarding and the added time, cost, and confusion of returning the number to the spare pool actually degrades the overall efficiency and fairness of toll free number allocation.<sup>25</sup>

#### **IV. THE COMMISSION SHOULD INITIATE A RULEMAKING PROCEEDING TO REVISE THE PART 52 RULES.**

To facilitate the direct transfer of toll free numbers between subscribers in the limited situations discussed above, ATIS respectfully requests that the Commission initiate a rulemaking proceeding with the purpose of revising Sections 52.103, 52.107, and 52.111 of its rules. A Notice of Proposed Rulemaking is warranted because this is an issue that has potential significance for every toll free subscriber and caller in the United States, and the current rules do

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<sup>24</sup> *Jahn*, 284 F.3d at 810.

<sup>25</sup> Moreover, these situations may actually further constrain the supply of numbers in the short term as subscribers may choose to take on a new toll free number instead of waiting for the necessary lag time to pass after which it could be reassigned its previous number.

not appear to serve the public interest.<sup>26</sup> Specifically, ATIS recommends the Commission propose changes to at least three sections of its Part 52 rules:

- First, Section 52.111 should be revised to add a new subparagraph providing that toll free numbers may be assigned directly to a user outside of the first-come, first-served regime where (1) the toll free number was mistakenly returned to the spare pool and picked up by other carriers; (2) there was a fraudulent or unauthorized transfer of shared use numbers; or (3) there was a legitimate merger, acquisition, bankruptcy, or other business transfer that necessitated transfer of the toll free number.
- Second, the definition of number brokering contained in Section 52.107 should be revised to indicate that direct transfers of toll free numbers between subscribers under the conditions discussed in the new subparagraph of Section 52.111 do not constitute number brokering, even if done as part of a commercial business transaction.
- Third, Section 52.103 should be revised (i) to indicate that in the case of an authorized direct number transfer pursuant to the new subparagraph of Section 52.111, numbers may go directly from Disconnect Status to Assigned Status without going to the spare pool, and (ii) in any other ways deemed necessary to effectuate this change.

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<sup>26</sup> To be clear, ATIS' request is intended to have only prospective effect. Any revision to the Commission's rules that the Commission takes pursuant to this request would not impact any previous Commission decisions and should not apply to any transfers, transactions, or other events occurring prior to the issuance of a future Commission Order.

**V. CONCLUSION**

As stated above, ATIS notes that, in certain circumstances, direct transfers of toll free numbers between subscribers are desirable and recommends that these transfers be permitted on a prospective basis. ATIS believes that its proposed rule changes would be consistent with the Commission's toll free numbering policy, would promote efficiency and flexibility within the industry, and would serve the public interest. As such, ATIS respectfully requests that the Commission promptly issue a Notice of Proposed Rulemaking to consider these issues.

Respectfully submitted,

By:



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