



Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
T +1 202 637 5600  
F +1 202 637 5910  
[www.hoganlovells.com](http://www.hoganlovells.com)

FILED/ACCEPTED

JAN 20 2012

Federal Communications Commission  
Office of the Secretary

January 20, 2012

FILE STAMP COPY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

**Re: Letter in Support of the Petition for Rulemaking of the Alliance for Telecommunications Industry Solutions (filed August 17, 2011).**

Dear Ms. Dortch:

Hogan Lovells US LLP (“Hogan Lovells”) submits this letter in support of the Petition for Rulemaking filed by the Alliance for Telecommunications Industry Solutions (“ATIS”) on August 17, 2011 (the “ATIS Petition”). The ATIS Petition urges the Federal Communications Commission to revise Part 52 of the its 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.”<sup>1</sup>

Hogan Lovells represents business service organizations (“BSOs”) that provide call centers on an outsourced basis for a variety of U.S. companies. These BSO clients are directly and adversely affected by the current rule and would benefit by a revision to Part 52.

These clients agree that the rules should be changed to facilitate the direct transfer of toll free numbers between users as requested by ATIS.<sup>2</sup> In addition, the Commission should

<sup>1</sup> Amendment of the Commission’s Rules to Allow Certain Direct Transfers of Toll-Free Numbers, *Petition for Rulemaking of the Alliance for Telecommunications Industry Solutions 1* (filed Aug. 17, 2011), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021705564> (“ATIS Petition”).

<sup>2</sup> ATIS seeks revision of the FCC’s rules to allow the direct transfer of toll free numbers between users in three circumstances: “(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

consider allowing direct transfers of toll free numbers when a customer of a BSO offering call center service, which included toll-free number services to that customer, wishes to change BSOs.<sup>3</sup> Under these circumstances, the toll-free number is transferred between the two outsourcing services but stays with a customer. Because the toll free number is registered to the transferring BSO, it does not port automatically to the new BSO or to the customer (as it would if it had been initially registered to the customer).

Implementing a revision to the rules to allow direct toll free number transfers under some circumstances is consistent with the FCC's obligation to "ensure the efficient, fair, and orderly allocation of toll free numbers,"<sup>4</sup> as required by Sections 1 and 251(e)(1) of Title II of the Communications Act. It would also enable the smooth operational transfer of toll free numbers between service providers when the ultimate beneficiary and end user of the toll free number—the customer that outsources its call center operations. There is no policy basis to retain the current rule, which should prohibit the direct transfer of toll free numbers in these circumstances.

#### **1. The Commission's Rules Prohibit the Direct Transfer of Toll Free Numbers Between Subscribers.**

Under Part 52 of the FCC's rules, a subscriber must reserve a toll free number through a "Responsible Organization" ("RespOrg"),<sup>5</sup> an entity chosen by the subscriber to manage and administer the toll free number in the Service Management System Database,<sup>6</sup> which contains data about each toll free number and tracks which toll free numbers are available for new customers and which numbers are already reserved.<sup>7</sup> RespOrgs assign toll free numbers to requesting parties on a first-come, first-serve basis.<sup>8</sup>

The Commission has not specified a separate process by which a subscriber can transfer a toll free number to another subscriber. Rather, when a subscriber stops using a toll free number, the number is placed on "disconnect status" for a four-month period, during which time a RespOrg may not assign the number to any other party.<sup>9</sup> Thereafter, the number becomes

---

number, or (3) as part of a bona fide merger, acquisition, bankruptcy, or other legitimate normal-course-of-business-related transfer." *Id.* at 1.

<sup>3</sup> We note that that this circumstance may be encompassed by ATIS' request that direct transfers be permitted for a "legitimate normal-course-of-business related transfer."

<sup>4</sup> Toll Free Service Access Codes, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11162, 11176 ¶ 18 (1997).

<sup>5</sup> 47 C.F.R. § 52.101(e).

<sup>6</sup> *Id.* § 52.101(c). Although most RespOrgs are telecommunications companies, any person or entity can apply to become a RespOrg. A list of all certified RespOrgs can be found on the SMS Database website. *See* <http://www.sms800.com>.

<sup>7</sup> 47 C.F.R. § 52.101(d).

<sup>8</sup> *Id.* § 52.111.

<sup>9</sup> *Id.* § 52.103(d).

available to the general public on a first-come, first-serve basis.<sup>10</sup> Last year, the Commission issued a *Declaratory Ruling* that confirmed the prohibition on direct toll free number transfers.<sup>11</sup>

The FCC also prohibits activities that it has deemed likely to frustrate the availability and value of toll free numbers. First, the FCC disallows the “warehousing” of toll free numbers, in which a RespOrg reserves toll free numbers in the SMS Database without an actual subscriber for whom those numbers are reserved.<sup>12</sup> Similarly, Part 52 prohibits “hoarding,” in which a subscriber acquires more toll free numbers than it intends to use, and which also includes the sale of a toll free number to another subscriber for a fee.<sup>13</sup> Hogan Lovells agrees with the importance of disallowing these activities. The ATIS Petition, modified by the request here, would not affect the anti-warehousing and anti-hoarding rules.

**2. The Commission Should Revise Its Part 52 Rules to Permit the Direct Transfer of Toll Free Numbers When the End Customer Employs a New Service Provider to Manage a Toll Free Number in Connection With the Provision of Outsourced Call Center Operations.**

Hogan Lovells does not disagree with the Commission’s interpretation of its Part 52 rules under the circumstances that gave rise to the *Declaratory Ruling*. However, the Commission should allow direct transfers of toll free numbers in circumstances that would serve the public interest.

When a BSO assumes a service contract from, or assigns a service contract to, another BSO that includes the obligation to manage the customer’s call center operations, the Commission’s rules appear to prevent the parties from directly transferring the toll free number used by the call center. The outgoing BSO must engage in the inefficient and operationally cumbersome task of returning the toll free number to the spare pool so that other subscribers can request and obtain the number on a first-come, first serve basis. Such a result contradicts common sense, however, because, the ultimate user of the toll free number—the customer—remains constant, even though the BSO may change. Moreover, the outgoing BSO may have little incentive to encourage transfer of the number and may try to retain it as a way to dissuade the customer from changing BSOs.

---

<sup>10</sup> *Id.*

<sup>11</sup> 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, *Declaratory Ruling*, 26 FCC Rcd 2109, 2111 ¶ 7 (WCB 2011) (“*Declaratory Ruling*”). In addition to citing the applicable rules, the Commission cited the SMS/800 Tariff, which prohibits any entity from “selling, brokering, bartering, and releasing for a fee (or otherwise) any toll-free number.” See SMS/800 Functions, FCC Tariff No. 1, Sec. 1.1 (“*SMS/800 Tariff*”). The Commission also stated that subscriber-to-subscriber transfers of toll free numbers are prohibited even if they are facilitated by a RespOrg. See *Declaratory Ruling* ¶ 10 (expressly prohibiting Database Service Management, Inc., the entity designated as the Toll Free Number Administrator, from giving effect to any RespOrg request to directly transfer toll free numbers between parties).

<sup>12</sup> 47 C.F.R. § 52.105.

<sup>13</sup> *Id.* § 52.107.

**3. Revision to the Part 52 Rules to Permit Toll Free Number Transfers Directly Between Call Center Service Providers Would Promote the Public Interest While Preserving the Commission's Ability to Police Unlawful Toll Free Number Practices.**

First, granting an exception under these circumstances would promote the fair and efficient administration of toll free numbers by enabling an End Customer to retain control and rights to its toll free number, even though the service provider hired to manage the toll free number service changes. Certainly customers have a reasonable expectation of this right, as the replacement of a BSO does not raise any apparent public interest or anti-competitive concerns that should trigger the loss of use of a toll free number. Even though "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."<sup>14</sup>

Second, the rule change requested would substantially reduce the switching costs that customers incur when deciding whether to change call center service providers.<sup>15</sup> Because the FCC's current regulatory regime would cause a customer to risk *losing* its toll free number simply because it wishes to hire a new BSO, it is far less likely that the customer will switch providers. As a result, incumbent call center providers possess a significant advantage of entrenchment. This not only undermines competition in the market for outsourced call center operations, but also reduces the ability of customers to choose telecom-related services. Adopting the ATIS Petition would allow toll free number transfers to function much like local number portability, which the Commission has consistently endorsed as pro-competitive and in the public interest.<sup>16</sup> Rather than empower end users to switch carriers, however, the proposed rule revision would facilitate the ability of a customer to change the service provider tasked with managing its call center operations.

Third, granting direct transfers between call center service providers will neither magnify the risk that the available toll free numbers (a limited public resources) will be depleted, nor otherwise frustrate the Commission's prohibition against the warehousing or hoarding of toll free numbers. Section 52.105 would still prohibit RespOrgs from warehousing toll free numbers, and Section 52.107 would still prohibit a subscriber's ability to hoard toll free numbers. By contrast,

---

<sup>14</sup> *ATIS Petition* at 2.

<sup>15</sup> See Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition, *Public Notice*, 26 FCC Rcd 15595 \*11 (WTB 2011) (seeking comment on the "switching costs" that "consumers may incur when switching providers").

<sup>16</sup> See, e.g., Telephone Number Portability, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23697, 23700 ¶ 9 (2003) ("[Local Number Portability] would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers."); see also Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8432 ¶ 153 (1996) ("[T]he public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services.").

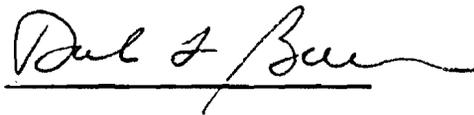
allowing direct transfers would substantially promote the continuity of use in toll free numbers, as a customer would have some assurance that it will be able to continue using the same toll free number after changing the service provider responsible for managing its call center operations.

Finally, the ATIS Petition is consistent with the FCC's understanding of a subscriber's control over its toll free number. Even though the Commission has reasoned that no party "owns" a telephone number,<sup>17</sup> a customer does possess a right to control its assigned toll free number while it is using it.<sup>18</sup>

For the reasons above, Hogan Lovells, on behalf of its clients, encourages the Commission to initiate a rulemaking proceeding to revise Part 52 of the its rules to permit the direct transfer of toll free numbers between users under limited circumstances.

Please contact me directly if you have any questions or concerns.

Respectfully submitted,



Daniel L. Brenner  
Christopher J. Termini  
Hogan Lovells US LLP

[Daniel.brenner@hoganlovells.com](mailto:Daniel.brenner@hoganlovells.com)  
D 1+ 202 637 5532

---

<sup>17</sup> *Declaratory Ruling* ¶ 7 (citing sources). Likewise, courts have found that no person holds a property interest in a telephone number. *Id.*

<sup>18</sup> See *SMS/800 Tariff* § 2.3.1(A)(7) (providing that subscribers possess a "controlling interest in their active numbers"). Additionally, a toll free subscriber retains the right to port its assigned toll free number to another Service Providers or RespOrg. *Id.* at 2.3.1(A)(9); *Provision of Access for 800 Service*, Second Report and Order, 8 FCC Rcd 907, 907 ¶¶ 4-5 (1993).