

FCC Proposes to Auction Desirable 833-prefix Numbers, Allow the Sale of Toll Free Numbers

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The Federal Communications Commission ("FCC" or the "Commission") adopted a [Notice of Proposed Rulemaking](#) ("NPRM") at its September Open Meeting that proposes significant changes to not only the methodology for assigning toll-free numbers but also the management of the toll free number assignment process. The principal proposal in the NPRM is to use an auction process to assign certain highly valued (e.g., vanity and repeater) toll free numbers "to better promote the equitable and efficient use of numbers." The Commission also proposes to eliminate its prohibition on the brokering of toll free numbers, which would open the marketplace for sales of valuable toll free numbers. **Comments will be due 30 days after publication of the NPRM in the Federal Register and reply comments will be due 60 days after publication.**

In the NPRM, the FCC proposes the use of a toll free number assignment approach that allows for the assignment of numbers in different manners including "by auction, on a first-come, first-served basis, an alternative assignment methodology, or by a combination of the forgoing as circumstances require." Beginning with the introduction of 888 area code toll free numbers in 1998, the FCC has employed a first-come, first-served approach to assignment of toll free numbers. However, the FCC has regularly struggled with the best way to ensure fair distribution when dealing with the following types of numbers, which tend to be highly valued: a) **vanity** – numbers that spell a name or word; and b) **repeater** – numbers that are easy to remember (e.g., 1-800-222-2222). As a result, the FCC now proposes the use of an auction process to fairly and efficiently assign these types of numbers.

Proposed Auction Method. The FCC specifically proposes the use of an auction to distribute the approximately 17,000 numbers that were subject to mutually exclusive requests resulting from the [2017 Order](#) opening 833 as another toll free area code. Mutually exclusive numbers are defined as those numbers that received at least two requests for assignment in the 833 process. The NPRM contemplates using a single round, sealed-bid Vickrey auction under which Responsible Organizations ("RespOrgs") would bid for the numbers most valuable to them. In a sealed bid auction, a bidder submits bids for individual numbers privately to the auctioneer. A Vickrey auction means the highest bidder for a number wins and pays the second-highest bid for the number. A reserve price would not be set since the purpose is to increase the efficiency of the assignment process not necessarily raise money and other toll free numbers will continue to be assigned at no cost. Auction participants would be required to simultaneously submit separate bids for each number they want, with the winning bid being determined independently for each separate number. The FCC does not intend to allow package bids, bidding on a combination of numbers at one time, in this process. If the auction approach is adopted, the FCC intends to evaluate the ultimate process and outcome to assess how to address future toll free number assignments.

Alternative Auction Methods - The FCC also seeks comment on any other auction methods including:

- *Pay-your-bid auction*, instead of a Vickrey auction, wherein the highest bidder wins and pays the value of his or her own bid. The NPRM notes that while this approach is simpler it could be less efficient because people are less incentivized to bid their true value for the good.
- *Open auction*, which allow the bidder the opportunity for price discovery and better understanding how other bidders value the good. In an open auction, the bidder generally is aware of what other participants are bidding and how much they are willing to spend but the FCC notes it may be more costly to implement.

Eligibility to Participate in Auction. The Commission seeks to allow only RespOrgs to bid in a toll free number auction therefore any entity interested in subscribing to a mutually exclusive number would need to approach a RespOrg to bid on their behalf. Alternatively, the FCC seeks input on whether subscribers should be allowed to participate directly and whether there would be any legal challenges to such an approach. Additionally, the NPRM considers whether the current definition of mutually exclusive numbers is the most appropriate or if it should consider whether the number is being sought by more than two RespOrgs rather more than two subscribers. Currently, the toll free numbering administrator (“TFNA”), Somos, can notify only RespOrgs about auctions and the FCC proposes to include subscriber information in the TFNA database to allow for subscribers to be notified, allowing for larger participation if auction methods are adopted.

Use of Auction Funds. The Commission proposes to use any net proceeds from any toll free number auction to assist with the costs of toll free number administration by the TFNA including the costs of implementing numbering auctions in the event the FCC assigns the TFNA that responsibility.

Brokering and the Sale of Toll Free Numbers. The NPRM also proposes a significant change to the assignment of toll-free numbers. It has long been recognized that no one “owns” toll free numbers: like spectrum, they are a public resource that are allocated for temporary use. Toll free numbers have heretofore been assigned on a first-come, first-served basis. The FCC rules contain strict prohibitions on the brokering (sale) of numbers and related prohibitions on warehousing and hoarding of numbers. The FCC has taken enforcement action against companies found to be brokering numbers. This NPRM explores doing away with these prohibitions as follows:

- *Secondary markets* - The FCC proposes to revise its rules to promote a secondary market for toll free numbers whereby subscribers would be allowed reassign their toll free numbers to other subscribers for a fee (or other compensation) as negotiated by the parties. The NPRM discusses ways to allow a subscriber to reassign the right to use the number despite the lack of ownership.
- *Brokering Rule* - Under current rules, RespOrgs and subscribers are prohibited from selling a toll free number for a fee. The FCC proposes to eliminate the brokering rule since it directly prohibits secondary markets.
- *Warehousing and Hoarding Rules* - The FCC prohibits warehousing which is the practice where a RespOrg reserves a toll free number even though no end user subscriber has requested the number for use. Hoarding, the acquisition of more toll free numbers from a RespOrg than the toll free subscriber intends to use, is also banned by the FCC. The NPRM now seeks comment on whether these rules effectively achieve their purpose of preventing number exhaust and ensuring effective use of numbering resources. If the Commission removes these rules, what additional restrictions or mechanisms would be needed to prevent RespOrgs or subscribers

from holding numbers they no longer need?

Public Interest Numbers and Other Proposals. The Commission is also considering setting aside for no cost certain toll free numbers that may be desired by organizations with public interest goals. Additionally, the NPRM raises the possibility of making changes to the overall toll free number management by Somos. Specifically, the Commission seeks input on the use of a mechanism other than a tariff for toll free administration and alternative regulatory treatment for the TFNA database services provided by Somos. The FCC also proposes to adopt new requirements to make Somos' operations and budget more transparent to ensure it is only recovering its operating costs as is allowed by the rules.

This NPRM is the first foray into toll free number assignment and administration in over a decade. Users of toll free numbers – especially those who use or desire vanity numbers – should follow this proceeding very carefully.