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FCC Proposes Big Changes to Toll Free Number Rules

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The FCC has proposed rules that could affect every company that uses toll free numbers in the US, by increasing the cost to obtain those numbers and creating an open market to buy and sell those numbers. The FCC plan would assign as many as 17,000 toll free numbers through an auction, and allow the purchase and sale of toll free numbers in the secondary marketplace.

Since toll free numbers were first introduced in the US, they have been assigned on a first-come, first-served basis, with only very limited exceptions. Today, the FCC prohibits buying or selling any telephone numbers, and has fined companies that are in the business of brokering toll free numbers.

The proposed auction would be limited to 17,000 numbers in the new 833 toll free area code. The FCC proposes to use a sealed-bid auction in which the winner would pay the second-highest price bid (known as a Vickrey auction), but asks whether a different type of auction or different assignment mechanism should be adopted. Under the proposal, all toll free numbers that are not auctioned (whether in the 833 code or any of the other toll free codes) would be assigned on a first-come, first-served basis, even if they were the kinds of numbers that might be valuable, such as numbers with easy-to-remember sequences or that spell the names of products or companies.

The FCC also proposes to change the rules to allow entities that hold or want to obtain toll free numbers to sell and buy those numbers in an open market. Under the proposal, both current holders of numbers and “RespOrgs,” the entities responsible for obtaining toll free numbers, could sell numbers to anyone willing to pay for them, at prices negotiated by the buyer and seller. While there are many RespOrgs, they generally are telephone companies that provide toll free service, including all of the largest long distance providers. The FCC also is considering eliminating or loosening its rules that prohibit warehousing and hoarding numbers, which potentially could permit companies to stockpile numbers they are not using. While toll free numbers already are sold today despite the existing rules, the sale of toll free numbers almost certainly will expand significantly if both current number holders and RespOrgs are permitted to sell numbers and if warehousing is permitted.

Taken together, these proposed rule changes could have a meaningful effect on the cost of obtaining toll free services. While the proposed auction would affect only a small proportion of toll free numbers, it potentially could set market prices for many other desirable numbers. Changing the rules to permit the sale of numbers would create additional incentives to treat numbers as assets, and loosening the hoarding rules could make it easier to hold numbers in anticipation of sale, rather than obtaining numbers for actual use. As a result, it would not be surprising if the proposed rule changes resulted in every toll free number, not just the most desirable ones, being sold at some price to new users. Prices also might vary based on the buyer, so that a pizza restaurant chain that asked for 833-4-A-PIZZA (833-427-4992) could be charged more than a company in an unrelated business that wanted the same number or a company that uses many toll free numbers could be charged a premium for those numbers.

Although the FCC proposal had initial support from four of the five commissioners, there is some chance the final decision could be different from what was proposed. The FCC asked for comment on a wide range of issues, including potential difficulties in implementing the proposed auction and the proposal to permit secondary market sales of numbers, and those issues will have to be addressed before it can adopt final rules.

Comments on the proposal are due on November 13 and replies to the comments are due on December 12. The FCC probably will not make a decision before late in the second quarter of 2018.

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