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November 19, 2015

Via Email

Betty Ann Kane (BAKane@psc.dc.gov)
Chairman, North American Numbering Council
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Sale and/or brokering of non-toll-free telephone numbers between private entities

Dear Chairman Kane:

During the September 30, 2015, NANC meeting, you tasked the Alliance for Telecommunications Industry Solutions (ATIS) Industry Numbering Committee (INC) with addressing the email from Matthew DeNero, Chief of the Wireline Competition Bureau, regarding the sale and/or brokering of non-toll-free telephone numbers. Attached are the ATIS INC's findings on this topic.

In preparing this response, ATIS INC reviewed a number of sources, including: your July 13th letter to the Wireline Competition Bureau, the Wireline Competition Bureau's September 30th response thereto, the Washington Post article referenced in your July 13th letter, existing Commission rules, and existing ATIS INC documents related to this topic. ATIS INC members also reviewed the websites of the companies referenced in the Washington Post article.

Please contact us should you have any questions.

Regards,

Dyan Adams, INC Co-Chair
Connie Hartman, INC Co-Chair

cc: Marilyn Jones, DFO, Marilyn.Jones@fcc.gov
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ATIS INC Findings on the Sale and/or Brokering of Non-Toll-Free Telephone Numbers (TNs) between Private Entities

Background

While ATIS INC has no authority to investigate individual parties' use of telephone numbers (TNs), the two companies identified in the April 23, 2015, [Washington Post article](#) state publicly that they are providing account or call management services, not specifically selling TNs.

- Phonenumberguy.com states on its Terms webpage: "What you are paying for is the search, activation and account transfer services for your selected phone number. The phone number becomes yours and yours alone after you have transferred it to your telephone carrier." See <http://phonenumberguy.com/terms/> (last accessed November 18, 2015).
- 212areacode.com states in its FAQs: "When you select a phone number on our website you will receive a full month of call forwarding service with 100 minutes to any US number, in essence we are offering you to sign up for service with us. However, if you are unsatisfied with our services and wish to use another provider, you may port the number to the carrier of your choice while the number remains active." See <http://212areacode.com/how-it-works/> (last accessed November 18, 2015).

ATIS INC does not know how these two companies obtain numbers, but possibilities include:

- TNs may be active with a service provider on an account owned by one of the companies, and then the company may provide the account information to the TN "buyer" to facilitate the new end user ("the buyer") assuming financial liability for the account with that service provider and then porting the number to the "buyer's" service provider of choice.
- The company negotiates with an existing user to obtain a TN for the company's own service provider account, and then a new end user ("buyer") purchases the number from the company.
- The company contacts an existing end user and facilitates the transfer of the number from the existing to a new end user.

Implications for FCC Numbering Rules and Policies

Although the Commission has determined on several occasions that numbers are a public resource and are not the property of carriers,¹ ATIS INC is not aware of any rules related to end user customers' transactions involving non-toll-free TNs analogous to the restrictions imposed on toll-free number subscribers.² INC Guidelines relating to such transactions apply to service providers, not individual users.³ However, ATIS INC notes that several FCC rules would appear to limit end users' ability to engage in such transactions in a manner that adversely affects number resource optimization. Those FCC rules include: crediting service providers for number

¹ For example, see *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, FCC 97-51 (rel. Feb. 19, 1997).

² See 47 CFR §§ 52.105-52.107. ATIS INC notes that these subscribers are typically businesses or similar enterprises rather than retail consumers.

³ "Telephone numbers are North American Numbering Plan (NANP) resources that are considered a public resource and are not owned by the assignees. Consequently, resources cannot be sold, brokered, bartered, or leased by the assignee for a fee or other consideration." ATIS-0300070, *Guidelines for the Administration of Telephone Numbers*, section 1.0.

utilization (including obtaining growth codes) only for *assigned* numbers;⁴ the related 180-day limit on holding users' numbers in "reserved" status, and FCC policies derived from that rule;⁵ and the requirement for sequential number assignment, which imposes limits on a service provider's ability to provide customers with "vanity" numbers.⁶ Further, some SPs' local exchange tariffs or customer agreements contain language indicating that the customer has no property right to TNs, and end users' ability to port numbers may give them the impression they have some property rights over a particular TN.

ATIS INC also notes that there are legitimate reasons for transferring numbers. If there is transfer of a TN from one account to another without permission or contrary to terms of service, those cases are typically dealt with by a service provider's security or fraud department. Some examples of legitimate transfers include:

- The assumption of liability from a parent's account to a child's account.
- Merger or acquisition of business.
- Transfer of a TN from personal account to corporate account.
- Transfer of a TN from a shared account to individual accounts (e.g., divorce, roommate, etc.).

Thus, rules or policies that require service providers to second-guess individual customers' requests to transfer numbers between different accounts could adversely affect consumers' legitimate needs. ATIS INC also notes that service providers are not in the position to determine or monitor if there is a sale/brokering transaction between parties associated with transfers of numbers. ATIS INC believes the Enforcement Bureau of the FCC is the proper authority to address issues of inappropriate transactions related to numbering resources.⁷

⁴ See generally 47 CFR § 52.15 (g)-(h); see also *VoIP Direct Access Order*, FCC 15-70, ¶ 32 (clarifying "that the terms 'end users' and 'customers' [in 'assigned numbers'] do not include telecommunications carriers and non-carrier voice or telecommunication service providers).

⁵ 47 CFR § 52.15 (f); *Number Resource Optimization*, 17 FCC Rcd 252, ¶¶ 121-22 (2001) ("limit[ing] the amount of numbers that are set aside for use by a particular customer, but are not being used to provide service on a regular basis.").

⁶ 47 CFR § 52.15 (j).

⁷ See *Richard Jackowitz, IT Connect, Inc., Notice of Apparent Liability for Forfeiture*, FCC 14-25 A (released March 26, 2014); 29 FCC Rcd 3318 (2014).