

## Changes Are Coming for Providers and Users of 800 Numbers

The Federal Communications Commission (“FCC”) is slated to consider potential new rules concerning the use of 800 numbers at its upcoming June 7, 2018, open meeting. One item involves the increasing ability of consumers to send and receive texts using 800 numbers. The FCC intends to clarify that its current rules require text messaging providers to obtain authorization from the entity that subscribes to the 800 number before text enabling that 800 number. The FCC will also seek comments on ways to track which 800 numbers have been text-enabled, including having businesses that buy 800 number service report when they authorize their 800 numbers to become text-enabled. The second major item will propose to phase out fees that local telephone companies charge long distance companies for originating 800-number calls. Although these rules will most directly affect network providers, they may also result in reduced costs for companies that provide 800-number calling to their customers.

### **Background**

Despite all the advancements in the ways people communicate, the use of 800 numbers remains highly popular. The primary advantage to 800 numbers used to be that consumers could make long-distance calls without incurring a separate long-distance “toll” charge, which is why 800 numbers are also called toll-free numbers. That advantage is diminishing as more and more consumers subscribe to all distance services that do not impose separate or additional charges for making long-distance calls. Demand for 800 numbers nevertheless remains high. Companies are using 800 numbers in different ways, such as tracking the effectiveness of advertising campaigns by assigning different 800 numbers to different campaigns. And they remain a popular branding tool, think 800-FLOWERS. Companies, governmental agencies and nonprofit organizations are also beginning to use 800 numbers for toll-free texting with their customers. (Toll-free numbers are also designated as 8YY numbers because the FCC has designated various 8YY codes in addition to 800, such as 833, 888 and 877.)

Various parties have raised problems with certain aspects of the 800-number calling framework. For example, 800 numbers are sometimes text-enabled without the knowledge or authorization of the entity that subscribes to the 800 number. According to the FCC, this could lead to customer confusion, fraud or abuse. Toll-free calls are also subject to so-called access charges, which are charges that a local telephone company imposes on the long distance companies that carry 800 calls. Some local telephone companies engage in schemes to artificially increase these access charges, imposing higher costs on the long distance company providing 800-number service—costs that are passed through to 800-number subscribers.

### **Text-Enabled 800 Numbers**

Under the toll-free numbering system, 800 numbers are assigned by entities called Responsible Organizations or RespOrgs. These entities are granted access to a database that contains available 800 numbers. The RespOrg can reserve an 800 number and then assign it to a business that becomes the 800-number or toll-free subscriber. The 800-number service is typically provided by a long-distance company, which is paid by the 800-number subscriber. RespOrgs are also responsible for creating appropriate records of 800-number assignments in the national 800 database so that when a customer calls an 800 number, the call is routed to the correct long-distance provider that in turn transports the call to the 800-number subscriber.

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The integrity of this system is being challenged by the proliferation of text-enabled 800 numbers. The concern arises when the toll-free subscriber has not provided authorization, or may not even know, that its 800 number has been text-enabled. There are currently no safeguards or controls around this process, which the FCC notes can lead to customer confusion, unlawful “robotexting,” misrouting of texts or even fraud. The FCC takes two steps to address the problem. First, as noted, it clarifies its existing rules to require that the toll-free number subscriber must authorize the text-enabling of its 800 numbers. It will be unlawful for a text messaging provider to text-enable an 800 number without first obtaining such authorization. As a corollary, 800 numbers that have not yet been assigned to any subscriber cannot be text-enabled because there is no entity to authorize that action. Apparently, some unassigned 800 numbers are being used for texting purposes.

To implement this requirement, the FCC proposes new rules governing the administration of the 800-number framework. Under the proposed rules, subscribers of 800 numbers would be required to inform its RespOrg when an 800 number has been authorized for texting, and the RespOrg in turn must update the appropriate records in the existing 800-number database. This will ensure a single, authoritative registry of text-enabled 800 numbers. The FCC seeks comment on these proposals and related questions, such as whether any additional information should be included in the 800-number database and whether the FCC should establish one or more separate registries just for text-enabled 800 numbers. The FCC also proposes to require entities that have already text-enabled an 800 number to enter that information in the 800-number database within six months. Comments on these proposals will be due 30 days after the publication in the Federal Register and reply comments will be due 45 days after publication.

#### **Access Charges for Originating 800 Calls**

Access charges are a remnant of the traditional telephone system where customers were provided local telephone service by one telephone company, called a local exchange carrier or LEC, while long distances services were provided by a separate long-distance carrier, called an interexchange carrier or IXC. The LEC serving the customer making a long-distance call would carry that call over its local network then hand it off to the IXC to carry the call to the called party. The LEC would charge the IXC for using various elements of the LECs’ local network, such as telephone switches and transport lines. This system of access charges also applied to 800 calls. Plus, there is an additional fee for 800-number calls because the LEC, or maybe another carrier in the call chain would have to query a special database to get information on how to route the call, for example, identifying which IXC was providing service for the particular 800 number. The LEC charges the IXC each time it must query this database.

In 2011, the FCC substantially revised its rules to phase out access charges, but not for 800 calls. Some carriers thus turned to devising ways to increase the access fees they could collect for originating 800 calls. The fees, for example, allow carriers to charge for each minute of a call, and for how far the call was carried over the local network before being handed off to the IXC. Some local carriers started using robocalling equipment to dial one 800 call after another and programmed their equipment in ways to extend the 800 call by tricking Interactive Voice Response Systems (IVRs) to keep the call from ending, building up extra minutes of use to charge the IXC. Some also inefficiently transport calls over longer distances before handing the call off to the IXC. Some carriers also appear to impose excessive database query fees, which can vary by a factor of 10 or more, or impose the fee multiple times for a single 800 call. All of this creates inefficiencies and unnecessarily increases the costs for IXCs to provide 800-number service, and these increased costs may be passed through to 800-number subscribers and

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ultimately their customers. (Note that this issue does not affect 800 calls from wireless phones, only landline phones. Wireless companies cannot charge access fees.)

To address these problems, the FCC proposes to phase out 8YY originating access charges over a three-year period and to cap 800-number database query fees. Among other questions, the FCC seeks comment on the extent to which these proposals would benefit the businesses that pay for 800-number service. The FCC anticipates savings from the elimination of the 800-number access fees should flow through to 800-number subscribers in the form of lower prices. Comments will be due on these proposals 60 days after publication in the Federal Register and reply comments will be due 90 days after publication.

Please contact the author if you would like more information on these issues.

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