

## **Recommended Draft Policy ARIN-2016-9: Streamline Merger & Acquisition Transfers**

Proposal Originator:

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Problem Statement:

In some 8.2 transfer situations, the current policy has the unwanted side effect of encouraging organizations not to update registration data, thus leaving the number resource in the name of a now defunct entity.

It is not uncommon for an entity which has bought another entity (with existing number resources) to leave Organizational data (Whois) in the name of the acquired company. The requirements in Section 8.2 put a justification burden on the acquiring organization, which was a legitimate protection while free pool assignments were available. It is worth revisiting Section 8.2 and looking for opportunities to simplify the policy in the interest of improving the registry data.

Consider the following:

1. In the case where both organizations (acquirer, acquired) have justified their existing number resources from an issuer (e.g. SRI-NIC, GSI, ARIN) under the policies that were in force at the time of issuance, the number resources have already been justified once.
2. ARIN does not customarily require organizations holding address space to document utilization except when they are asking ARIN to issue more space.
3. Section 8.2 M&A is not asking ARIN to issue more space or provide authorization to acquire space in an 8.3 transfer. It is simply updating ARIN's database to reflect the current reality, that control of a company has changed.

Language that speaks of required return or transfer of space is of questionable enforceability in the context of the current RSA (section 6, "ARIN has no right to revoke any Included Number Resources under this Agreement due to lack of utilization by Holder").

Clauses that serve to scare organizations away from updating their information are counter to the goal of maintaining good data in Whois.

Policy should allow ARIN staff to concentrate finite resources on ascertaining chain of custody so as to minimize the chance of fraudulent transfers rather than auditing space already issued.

Policy Statement:

Delete the bullet point in NRPM 8.2 that reads:

For mergers and acquisition transfers, the recipient entity must provide evidence that they have acquired assets that use the resources to be transferred from the current registrant. ARIN will maintain an up-to-date list of acceptable types of documentation.

Add this statement to list of conditions for clarity:

"The Internet number resources being transferred as part of an 8.2 transfer will not be subject to a needs-based assessment during the process of the 8.2 transfer."

Add this conditional to the bottom of 8.2 for linguistic clarity:

"AND one or more of the following:

The recipient must provide evidence that they have acquired the assets that use the resources to be transferred from the current registrant.

OR

The recipient must show that they have acquired the entire entity which is the current registrant."

Remove the following paragraph from Section 8.2 of the NRPM:

ARIN will proceed with processing transfer requests even if the number resources of the combined organizations exceed what can be justified under current ARIN transfer policy as defined in section 8.5. In that event, ARIN will work with the resource holder(s) to transfer the extra number resources to other organization(s) or accept a voluntary return of the extra number resources to ARIN.

These four changes will leave Section 8.2 looking like this:

## 8.2. Mergers and Acquisitions

ARIN will consider requests for the transfer of number resources in the case of mergers, acquisitions, and reorganizations under the following conditions:

The current registrant must not be involved in any dispute as to the status of the resources to be transferred.

The new entity must sign an RSA covering all resources to be transferred.

The resources to be transferred will be subject to ARIN policies.

The minimum transfer size is the smaller of the original allocation size or the applicable minimum allocation size in current policy.

The Internet number resources being transferred as part of an 8.2 transfer will not be subject to a needs-based assessment during the process of the 8.2 transfer.

AND one or more of the following:

The recipient must provide evidence that they have acquired the assets that use the resources to be transferred from the current registrant.

OR

The recipient must show that they have acquired the entire entity which is the current registrant.

Comments:

Timetable for Implementation: Immediate