

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Transaction Network Services, Inc., TSYS)	
Acquiring Solutions, LLC, and Electronic Payment)	
Systems, LLC)	CC Docket No. 95-155
)	
Regarding FCC Jurisdiction and RespOrg)	
Responsibilities to Comply with Part 52 of the)	
FCC's Rules and the SMS/800 Tariff Requirements)	

DECLARATORY RULING

Adopted: February 24, 2011

Released: February 24, 2011

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) issues a declaratory ruling in response to a petition filed by TSYS Acquiring Solutions, LLC (TSYS) regarding the transfer of toll free telephone numbers.¹ The Bureau affirms that the Commission has exclusive jurisdiction to make decisions about the distribution of North American Numbering Plan (NANP) numbers, and that, under the Commission's rules, Responsible Organizations (RespOrgs)² may not transfer toll free numbers directly from one entity to another without Commission approval,³ notwithstanding an arbitration decision directing such a transfer that was upheld by a United States District Court.

2. *Background.* TSYS and Electronic Payment Systems, LLC (EPS) (collectively, the parties) are involved in the credit and debit card industry. In August 2005, the parties entered into an agreement whereby EPS would use the card processing services of TSYS.⁴ Over time, the parties began to have disputes regarding fees and other matters. For example, the agreement provides that TSYS would install an exclusive toll free number on the point-of-sale terminals of EPS's merchant customers.⁵ TSYS, however, did not provide EPS with an exclusive toll free number, but rather "boarded" EPS merchants onto seven different toll free numbers that are also used by "hundreds of thousands of non-EPS merchants."⁶

3. In February 2007, TSYS initiated an arbitration to resolve the parties' various disputes regarding fees. The arbitrator ruled, among other things, that "TSYS is to provide EPS with immediate

¹ Transaction Network Services, Inc., TSYS Acquiring Solutions, LLC, and Electronic Payment Systems, LLC, Regarding FCC Jurisdiction and RespOrg Responsibilities to Comply with Part 52 of the FCC's Rules and the SMS/800 Tariff Requirements, Petition, CC Docket No. 95-155 (filed Jan. 24, 2011) (TSYS Petition).

² A RespOrg is the entity that reserves a toll free number from the SMS/800 database on behalf of a toll free subscriber. See 47 C.F.R. §52.101(b) ("The entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.").

³ 47 U.S.C. § 251(e); 47 C.F.R. § 52.111.

⁴ *TSYS Acquiring Solutions, LLC v. Electronic Payment Systems, LLC*, 2011 WL 308461 (D. Ariz. Jan 28, 2011).

⁵ *Id.* at 2.

⁶ *Id.*

and continuous ownership, control, and access to the toll-free 1-800 number that connects EPS'[s] merchant to a processor.”⁷ The District Court for the District of Arizona affirmed the arbitrator’s award.⁸ Because TSYS had been using seven toll-free numbers for EPS’s traffic, the parties had a subsequent dispute over the meaning of “*the* toll-free 1-800 number.” The District Court interpreted the arbitrator’s award to require TSYS to surrender all seven of the toll free numbers that EPS merchants use.⁹

4. TSYS filed a petition with the Commission stating that “the transfer of seven toll free numbers sought by EPS would. . . violate the Commission’s prohibition on such transfers, as well as the SMS/800 Tariff. . . .”¹⁰ TSYS asks the Commission “to exercise its exclusive jurisdiction over toll free numbers and provide confirmation to the parties that (1) a party may not seek to evade the FCC’s exclusive jurisdiction and rules regarding the handling of toll free numbers through collection actions in federal district court seeing an ‘ownership’ or other interest in another party’s toll free numbers; (2) RespOrgs may not, without explicit authority from the FCC, transfer toll free numbers between unaffiliated subscribers; and (3) efforts by EPS to require the transfer of toll free numbers for which TSYS is the subscriber of record violate the Commission’s Rules and the SMS/800 Tariff, and are contrary to the public interest”¹¹

5. Transaction Network Services, Inc. (TNS), the RespOrg for three of the toll free numbers at issue, filed a response in support of the TSYS Petition. TNS outlined its obligations and restrictions as a RespOrg and sought to highlight the difficult situation it has been placed in by the actions of EPS.¹² Subsequently, EPS filed an opposition to the petition, claiming TSYS is using the Commission “to relitigate or avoid the execution of a ruling against TSYS in binding arbitration, upheld in Federal District Court twice and now on appeal to the U.S. Court of Appeals.”¹³ TSYS further argues that the arbitrator’s award and District Court decisions are not contrary to Commission rules and policies.¹⁴ Rather, EPS

⁷ *Id.* at 1.

⁸ *TSYS Acquiring Solutions, LLC v. Electronic Payment Systems, LLC*, 2009 WL 3419644 at *1-*5 (D. Ariz. Oct. 22, 2009).

⁹ *TSYS Acquiring Solutions, LLC v. Electronic Payment Systems, LLC*, 2010 WL 1781015 at *5 (D. Ariz. May 4, 2010); *see also TSYS Acquiring Solutions, LLC v. Electronic Payment Systems, LLC*, Case No. CV-09-00155-PHX-JAT (D. Ariz. Feb. 15, 2011). The seven toll free numbers are: 800-370-8507, 877-488-0358, 800-411-6902 (toll free numbers for which Transaction Network Services, Inc., is the RespOrg), and 800-523-0527, 800-533-4488, 877-488-0467, and 877-488-0757 (toll free numbers for which Verizon is the RespOrg). *See* TSYS Petition at 5, n.2.

¹⁰ TSYS Petition at i.

¹¹ *Id.* at ii.

¹² *See* Transaction Network Services, Inc., TSYS Acquiring Solutions, LLC, and Electronic Payment Systems, LLC, Regarding FCC Jurisdiction and RespOrg Responsibilities to Comply with Part 52 of the FCC’s Rules and the SMS/800 Tariff Requirements, Transactions Network Services, Inc. Response to TSYS Petition, CC Docket No. 95-155 (filed Feb. 6, 2011).

¹³ *See* Transaction Network Services, Inc., TSYS Acquiring Solutions, LLC, and Electronic Payment Systems, LLC, Regarding FCC Jurisdiction and RespOrg Responsibilities to Comply with Part 52 of the FCC’s Rules and the SMS/800 Tariff Requirements, Petition, CC Docket No. 95-155 at 1 (filed Feb. 23, 2011) (also stating, “TSYS grossly exaggerates the implications related to transferring the 800 numbers and substantially misrepresents the facts which have been conclusively determined by the Court.”) *see id.* at 1-2.

¹⁴ *See id.* at 4-5.

argues that a transfer of the toll free numbers is not barred in the present case, which it claims is “analogous to a merger or an acquisition situation in that it merely implements a voluntary contractual agreement entered into the parties....”¹⁵

6. *Discussion.* The Bureau issues this declaratory ruling to provide guidance on Commission rules regarding the distribution and transfer of numbers, and to ensure that RespOrgs do not transfer numbers in violation of Commission orders and rules. We note that the Commission was not a party to the arbitration or litigation, and is not bound by those decisions. Thus, those decisions did not alter any Commission precedent regarding the transfer of telephone numbers.

7. Section 251(e)(1) the Communications Act gives the Commission exclusive jurisdiction over “those portions of the North American Numbering Plan that pertain to the United States.”¹⁶ Toll free numbers are part of the North American Numbering Plan.¹⁷ The Commission has often stated that telephone numbers are a public resource, and neither carriers nor subscribers “own” their telephone numbers.¹⁸ Moreover, courts have found that no one has a property interest in a telephone number.¹⁹ The Commission has adopted rules that dictate how subscribers obtain toll free numbers. Section 52.101(e) of those rules provides that toll free subscribers must request a RespOrg to reserve a toll free number from the SMS/800 database.²⁰ Section 52.111 of the Commission’s rules provides that “[t]oll free numbers shall be made available on a first-come, first-served basis unless the Commission directs otherwise.”²¹ We have not directed otherwise in this instance.²² Those rules also dictate what happens to a toll free

¹⁵ *Id.* at 5.

¹⁶ 47 U.S.C. § 251(e)(1).

¹⁷ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan*, CC Docket No. 96-98, Third Order on Reconsideration and Memorandum Report and Order, 14 FCC Rcd 17964, 17968, para.2, n.10 (stating, “[c]urrently, the North American Numbering Plan (NANP) area consists of the United States, Canada, and a number of Caribbean countries. There are geographic NPAs which correspond to discrete geographic areas within the NANP Area and non-geographic NPAs that are instead assigned for services that transcend specific geographic boundaries, such as NPAs in the toll free 800-number format.”).

¹⁸ *Toll Free Service Access Codes*, CC Docket No. 95-155, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9061, n.14 (1998); see also *Toll Free Service Access Codes*, CC Docket No. 95-155, Notice of Proposed Rulemaking, 10 FCC Rcd 13692, 13702, para. 36 (1995); *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591, para. 4 (1995). *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 20 FCC Rcd 15089, 15090-91, para. 4 (2005); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 21 FCC Rcd 9925, 9927, para. 4 (2006); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 22 FCC Rcd 651, 653, para. 7 (2007); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 24 FCC Rcd 13022, 13029, para. 12 (2009) (pending on remand).

¹⁹ See, e.g., *StarNet, Inc.*, 355 F.3d 634, 637 (7th Cir. 2004).

²⁰ See 47 C.F.R. § 52.101(e).

²¹ See 47 C.F.R. § 52.111.

²² We note that the Commission has only directed otherwise in extraordinary circumstances involving public safety. See e.g., *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 21 FCC Rcd 9925 (2006) (involving a toll free number to the Red Cross in the wake of hurricanes Katrina and Rita); see also *Toll Free Service Access Codes*, (continued....)

number when a subscriber ceases to use it. That is, a RespOrg must place the number into a pool of available numbers – called the “spare pool”²³ — so that another RespOrg may reserve it for another subscriber on a first-come, first-served basis.

8. The SMS/800 Tariff,²⁴ which contains the regulations and rates that apply to RespOrgs providing toll free services states that “[s]pecific toll-free number requests are honored based upon availability, on a first-come first-served basis”²⁵ The tariff also provides that, “[a]n individual toll-free number can be assigned to only one subscriber. No individual or entity (*e.g.*, subscriber, service provider) has a proprietary interest in any given toll-free number; however, subscribers do have a controlling interest in their active numbers.”²⁶ Finally, the tariff states, “[a]ll entities, (*e.g.*, Resp Orgs, subscribers, service providers), are prohibited from selling, brokering, bartering, and releasing for a fee (or otherwise) any toll-free number.” If a RespOrg -- such as TNS or Verizon in this case -- violates these provisions of the tariff, its status as a RespOrg is subject to termination.²⁷

9. We find that several aspects of the arbitrator’s ruling, and the District Court’s affirmation of that ruling, conflict with the above provisions for assigning and transferring toll free numbers. The requirement that TSYS transfer the seven toll free numbers to EPS is contrary to Commission rules directing that toll free numbers be made available on a first-come, first-served basis, and, if a subscriber ceases to use a number, it be returned to the spare pool. In addition, the assumption that a subscriber “owns” its toll free number, and the assertion that EPS has, or is entitled to, “immediate and continuous ownership” of the seven toll free numbers, are contrary to Commission and court precedent. Therefore, notwithstanding the arbitration ruling that the toll free numbers belong to EPS, and the court’s order that TSYS transfer the seven toll free numbers to EPS, RespOrgs are prohibited from transferring or reassigning those numbers in a manner inconsistent with Commission orders and rules. This declaratory ruling only reiterates our rules regarding the distribution and transfer of numbers. We take no position on whether TSYS committed a contractual breach or on what other remedies may be appropriate in this instance.

10. Finally, we note that Database Service Management, Inc. (DSMI), the entity designated as the Toll Free Number Administrator, must also comply with the applicable statutory provisions,

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CC Docket No. 95-155, Order, 24 FCC Rcd 13022 (2009) (pending on remand) (involving toll free numbers to suicide prevention hotlines).

²³ See *e.g.*, 47 C.F.R. § 52.103(a)(6) (Spare Status. The toll free number is available for reassignment by a Responsible Organization).

²⁴ Toll free numbers in the NANP, along with electronic records for those numbers, are contained in the centralized SMS/800 Database. Access to the database is offered collectively by the Bell Operating Companies (BOCs) through the SMS/800 Tariff. Representatives from the BOCs collectively comprise the SMS Management Team (SMT), which is responsible for managing all aspects of SMS/800 services. Daily operation of the SMS/800 Database is performed by Data Services Management, Inc. See *Toll-Free Access Codes*, CC Docket No. 95-155, Order on Reconsideration, 22 FCC Rcd 22188, 22188-89, para. 2 (2007). The SMS/800 Tariff contains regulations, rates and charges applicable to the provision of SMS/800 functions and support services for toll free telephone numbers. See SMS/800 Functions, FCC Tariff No. 1, Sec. 1.1.

²⁵ SMS/800 Functions, FCC Tariff No. 1, Sec. 2.3.1(A)(2).

²⁶ *Id.* at 2.3.1(A)(7).

²⁷ *Id.* at § 2.2.1.

Commission and court precedent, rules, and tariff provisions.²⁸ If DSMI receives RespOrg requests to transfer the seven toll free numbers at issue in this proceeding from TSYS to EPS, DSMI may not honor such requests unless directed to do so by the Commission. Under Commission rules, absent a specific directive by the Commission, relinquished toll free numbers go into the toll free spare pool where they will become available on a first-come, first-served basis to any subscriber, including EPS, *via* a RespOrg request.

11. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 225, and 251(e), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 225, and 251(e), and sections 0.91, 0.141, 0.291, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.141, 0.291, 0.361, 1.3, that this Declaratory Ruling IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

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²⁸ Access to the SMS/800 database is provided by BOCs through the SMS/800 Functions FCC Tariff No. 1. The BOCs established SMS/800, Inc., a non-profit District of Columbia corporation, to administer the SMS/800 Services on their behalf. SMS/800, Inc. manages and oversees the SMS/800 services while DSMI is contracted by SMS/800, Inc. to perform the daily business management of SMS/800 services. Additionally, DSMI is the entity designated as the Toll Free Number Administrator by the FCC. *See* Reply Comments of SMS/800 and Database Services Management, Inc. on Public Notice and Response to the Toll Free Number Coalition's Petition for Emergency Relief and Expedited Action, CC Docket No. 95-155 (filed Sept. 10, 2010); *see also e.g., Toll Free Service Access Codes*, CC Docket No. 95-155, Fifth Report and Order, 15 FCC Rcd 11939, 11946-49, paras. 17-25.