PUBLIC NOTICE

Federal Communications Commission
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COMMENTS SOUGHT ON ALLOCATION METHOD FOR 844 TOLL FREE CODE OPENING

CC Docket No. 95-155

Comments Due: May 6, 2013

On November 14, 2012, SMS/800, Inc., the company that oversees the 800 Service Management System for the North American Numbering Plan, recommended that the Federal Communications Commission (Commission) open the 844 toll free code on February 15, 2014.[1] When the Commission opens the 844 code for the first time, subscribers will have access to essentially all the toll free numbers within the 844 Numbering Plan Area, including vanity numbers within the 844 code. We note that Commission rules prohibit warehousing, hoarding, and brokering of toll free numbers.[2] In addition, Commission rules provide that a toll free number may only be reserved at the request of a legitimate end user customer and may not be reserved with the intent of selling said number for a fee.[3] Nonetheless, we seek comment on adopting a distribution method that would enhance access to 844 toll free numbers on an equitable basis.

The Wireline Competition Bureau (Bureau) seeks comment on whether the number allocation method it adopted to open the 855 toll free code should be used here. Specifically, on September 30,

[1] Letter from Gina Perini, Chief Administrative Officer and General Counsel, SMS/800, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155 and WCB Docket No. 12-260 (filed Nov. 14, 2012). SMS/800, Inc. had previously advised the Wireline Competition Bureau (Bureau) that the projected date for toll free number exhaust based on existing open codes is first quarter 2014. Letter from Thomas O. FitzGerald, President & CEO, SMS/800, Inc. to Sharon E. Gillett, Chief, Wireline Competition Bureau, CC Docket No. 95-155 (filed June 27, 2012); *see also* Letter from Thomas O. FitzGerald, President & CEO, SMS/800, Inc. to Julie A. Veach, Chief, Wireline Competition Bureau, CC Docket No. 95-155 (filed Nov. 8, 2012) (providing updated forecast).

[2] *See* 47 C.F.R § 52.105(a) (defining warehousing as the "practice whereby Responsible Organizations, either directly or indirectly through an affiliate, reserve toll free numbers from the Service Management System database without having an actual toll free subscriber for whom those numbers are being reserved."); *see also* 47 C.F.R § 52.107(a) ("hoarding is the acquisition by a toll free subscriber from a Responsible Organization of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service. The definition of hoarding also includes number brokering, which is the selling of a toll free number by a private entity for a fee."). *Mr. Richard Jackowitz, IT Connect, Inc*., Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7896 (2012) (finding Mr. Jackowitz and IT Connect apparently liable, jointly and severally, for a proposed forfeiture penalty in the amount of $240,000 for apparently violating Section 52.107 of the Commission's rules, willfully and repeatedly by brokering 15 toll free numbers for fees ranging from $10,000 to $17,500 per number).

[3] *See generally* 47 C.F.R. §§ 52.101-52.111 for compliance with the Commission's toll free rules.

2010, the Bureau directed the toll free administrator to limit each Responsible Organization (RespOrg) to 100 numbers in the 855 code, per day, for the first 30 days that the code was open, thus waiving the Commission's rule that toll free numbers be distributed without limitation on a first-come, first-served basis during the 30-day allocation period.[4] The Bureau adopted that method to help ensure an efficient and equitable distribution of new numbers at the code's opening. Interested parties are requested to notify us of any concerns they have about that allocation method and specify how the Commission could structure an allocation method to address those concerns.[5]

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the date indicated above. All filings should refer to CC Docket No. 95-155. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[6] Persons making *ex parte* presentations must file a

[4] *See Toll Free Service Access Codes,* Order, CC Docket 95-155, 25 FCC Rcd 13687, para. 1 (2010).

[5] *See id.*; *see also* 47 C.F.R. § 52.111 ("Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission.").

[6] 47 C.F.R. §§ 1.1200 *et seq.*

copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, contact Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, 202-418-0388 or Michelle.Sclater@fcc.gov.

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