

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

In the Matter of )  
 )  
Toll Free Service Access Codes ) CC Docket No. 95-155

ORDER

Adopted: June 10, 2016

Released: June 10, 2016

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants a petition filed by Somos, Inc., the toll free database administrator, for a temporary waiver of section 52.111, the Commission’s “first-come, first-served” rule governing allocation of 800 toll free numbers.<sup>1</sup> As discussed below, we agree with the Somos allocation proposal for 96,000 recently-available toll free numbers in the 800 code currently controlled by the Somos Help Desk. We therefore find good cause to waive section 52.111 for the first five days following the release of these 800 numbers.

2. Somos explains in its petition that on January 14, 2016, it disconnected a Responsible Organization (RespOrg)<sup>2</sup> for nonpayment of RespOrg fees owed to Somos. Pursuant to its procedures, Somos transferred all the RespOrg’s toll free numbers to the Somos Help Desk.<sup>3</sup> Of the more than 400,000 disconnected toll free numbers transferred to the Help Desk, 96,000 are in the 800 code. The 800 code is the most sought-after toll free code and, for this reason, no 800 numbers are currently available to RespOrgs from the Somos toll free database.<sup>4</sup> Due to the popularity and scarcity of 800 numbers, Somos proposes to conduct a graduated release of these numbers, limiting RespOrgs to 100 numbers in the 800 code per day, for a period of five (5) days.<sup>5</sup> Somos maintains, based on its past experience, that this approach is necessary to ensure that a small number of RespOrgs do not obtain all or most of the 800 numbers as soon as they become available.<sup>6</sup> The record supports the Somos proposal.<sup>7</sup>

<sup>1</sup> See Petition for Waiver of Somos, Inc., WC Docket No. 95-155 (filed Mar. 21, 2016) (Somos Petition); see also 47 CFR § 52.111 (“Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission.”).

<sup>2</sup> RespOrgs are entities that the toll free database administrator certifies to access the database. Any entity that meets reasonable financial, technical, and service-related requirements may serve as a RespOrg, including large users of toll free service. See *Provision of Access for 800 Service*, CC Docket No. 86-10, Order, 8 FCC Rcd 1423, 1428, para. 4 (1993). Subscribers seeking to obtain a toll free number must contact a RespOrg, which then obtains the toll free number from the toll free database. The RespOrg also manages the record for the number, which includes information about billing, routing, and the subscriber’s interexchange carrier.

<sup>3</sup> Somos Petition at 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2-3. Somos notes that if 800 numbers are still available after five days, it will use the standard first-come, first-served number reservation method for their release. See *id.* at 3.

3. The plain language of section 52.111 of the Commission's rules authorizes the Commission to assign toll free numbers on a basis different than the usual first-come, first-served basis.<sup>8</sup> Moreover, the Commission has the authority to waive any provision of its rules for good cause shown.<sup>9</sup> The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.<sup>10</sup> We agree with Somos that a waiver is necessary in this instance to ensure that RespOrgs using an enhanced technology to access the toll free database to obtain numbers in batches, rather than on a one-at-a-time basis, do not have an unfair advantage over other RespOrgs to reserve more numbers.<sup>11</sup> We also agree with Somos that its proposed limitation, similar to that of a code opening, will result in a wider and fairer distribution of these valuable 800 numbers than a method that allows a few RespOrgs to dominate the release.<sup>12</sup> We thus conclude that the particular facts of this case—the unique availability of a large quantity of highly sought-after 800 numbers—would make strict compliance with the Commission's first-come, first-served rule inconsistent with the public interest.

4. Also, as Somos notes in its petition, a limited release of these 800 numbers for a period of five (5) days is consistent with our actions taken in recent code openings.<sup>13</sup> Previously, the Bureau has approved allocation procedures that differ from the first-come, first-served process when opening the 855 and 844 toll free codes to allow for a more equitable distribution of numbers in those new codes.<sup>14</sup> Our concern with opening those new toll free codes was that without an allocation method, larger RespOrgs with enhanced, mechanized connectivity to the toll free database would be able to quickly reserve sought-after vanity numbers as soon as the new codes opened.<sup>15</sup> We have that same concern about making these highly-sought after 800 numbers available on an unlimited basis, and the commenters share our concerns.<sup>16</sup>

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<sup>7</sup> See generally, ATL Communications Comments (filed Apr. 21, 2016) (ATL Comments); Alliance for Telecommunications Industry Solutions Comments (filed Apr. 21, 2016) (ATIS Comments); Inteliquent Comments (filed Apr. 21, 2016) (Inteliquent Comments).

<sup>8</sup> 47 CFR § 52.111 (“Toll-free numbers shall be made available on a first-come, first-served basis *unless otherwise directed by the Commission.*” (emphasis added)).

<sup>9</sup> See 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

<sup>10</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>11</sup> *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 28 FCC Rcd 16139, 16140, para. 3 n.13 (Wireline Comp. Bur. 2013) (*844 Code Opening Order*) (explaining in the context of opening the new 844 toll free code, that the Mechanized Generic Interface technology used by large RespOrgs allows them to obtain numbers in batches, rather than one-at-a-time).

<sup>12</sup> Somos Petition at 3 (noting that in a prior release of limited 800 toll free numbers “two entities dominated the release, obtaining more than 70% of all available 800 numbers.”).

<sup>13</sup> See Somos Petition at 3 (“This is similar to the type of limitations that have been imposed during the previous code openings to ensure fair and equitable distribution of TFNs.”); see also Inteliquent Comments at 5 (arguing the Commission should use the same analysis for the 96,000 800 numbers as it has for previous toll free code openings).

<sup>14</sup> See generally, *844 Code Opening Order; Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 25 FCC Rcd 13687 (Wireline Comp. Bur. 2010) (*855 Code Opening Order*).

<sup>15</sup> See *844 Code Opening Order*, 287 FCC Rcd at 16140, para. 3; *855 Code Opening Order*, 25 FCC Rcd at 13688, para. 3.

<sup>16</sup> See ATL Comments at 1 (“800 numbers in any significant number have been unavailable for many years. Consequently, RespOrgs like ATL Communications have large backlogs of client requests for this resource. Those consumers need to be in a fair position for their RespOrg to have equal access to these numbers regardless of their

(continued....)

5. The Bureau therefore finds good cause to waive temporarily the Commission's requirement that toll free numbers be assigned on a first-come, first-served basis in order for Somos to implement its proposed allocation method for the 96,000 available 800 numbers. We conclude that to ensure a more equitable distribution of these desirable numbers a short-term, limited deviation from the first-come, first-served rule is sufficient.<sup>17</sup> We therefore limit this waiver to five (5) days from the date that Somos makes these numbers available, after which time Somos must distribute these numbers on a first-come, first-served basis in accordance with section 52.111 of the rules.

6. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 251(e), sections 1.3 and 52.111 of the Commission's rules, 47 C.F.R. §§ 1.3 and 52.111, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291,<sup>18</sup> that Somos, upon release of toll free numbers in the 800 code from its Help Desk to the pool of available numbers, shall limit the quantity of toll free numbers from the 800 code each Responsible Organization may reserve to 100 per day for the first five (5) days following that release. We also direct Somos to notify the Commission and all RespOrgs electronically at least 24 hours in advance of the release of the 800 numbers.

7. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 251(e) and 408 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251(e), and 408, section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Petition for Waiver – Expedited Action Requested filed by Somos, Inc. IS GRANTED.

8. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 251(e) and 408 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251(e), and 408, section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that this action IS EFFECTIVE IMMEDIATELY UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero  
Chief  
Wireline Competition Bureau

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RespOrgs size or technological capabilities.”); *see also* ATIS Comments at 2 (“ATIS SNAC agrees with Somos that there is ‘widespread and intense interest’ in 800 numbers that would warrant a limited release of these numbers to ensure the equitable distribution of TFNs.”); Inteliquent Comments at 5 (“Like vanity toll free numbers in a new toll free area code, these are highly desirable toll free numbers . . . . And absent a waiver from the first-come, first-served rule, large RespOrgs with access to a Mechanized Generic Interface will be able to acquire the vast majority of available 800 numbers.”).

<sup>17</sup> *See 844 Code Opening Order*, 28 FCC Rcd at 16141-42, paras. 5-7 (articulating benefits of granting a temporary waiver); *see also 855 Code Opening Order*, 25 FCC Rcd at 13689-90, para. 6 (same).

<sup>18</sup> *See* 47 U.S.C. § 155(c).