

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

In the Matter of)
Toll Free Service Access Codes) CC Docket No. 95-155
Database Services Management, Inc.) NSD File No. L-99-87
Petition for Declaratory Ruling)
Beehive Telephone Company) NSD File No. L-99-88
Petition for Declaratory Ruling)

FIFTH REPORT AND ORDER in CC Docket No. 95-155
ORDER in NSD File No. L-99-87
ORDER in NSD File No. L-99-88

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By the Commission:

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I. INTRODUCTION

1. In this Order, we resolve outstanding issues raised in our toll free number rulemaking proceeding¹ related to the propriety of Database Service Management Inc. (DSMI) serving as an administrator of the toll free number database system as well as related issues referred to the Commission from the United States District Court for the District of Utah.² We approve the recommendation of the North American Numbering Council (NANC) that DSMI continue to serve as the administrator of the toll free number database system, referred to as the SMS/800 system, at this time. We find that DSMI is an impartial administrator under section 251(e)(1) of the Communications Act.³ We also resolve seven specific issues presented in petitions for declaratory ruling filed by Beehive Telephone Company (Beehive) and DSMI, following court referral, relating to the propriety of DSMI's administration of the SMS/800 system, and the revocation of toll free numbers assigned to Beehive. In doing so, we conclude that access to the SMS/800 database is properly tariffed and administered as a common carrier service. We further conclude that the Commission's determination that access to call-related databases and service management systems are unbundled network elements under section 251(c)(3)⁴ does not invalidate the existing interstate tariff under which toll free service providers purchase access to the centralized SMS/800 database offered collectively by the Bell Operating Companies (BOCs). Finally, we direct the North American Numbering Council (NANC) to provide recommendations on restructuring the ownership and operation of the current system of toll free number administration.

II. BACKGROUND

A. Overview - The Toll Free Service System

2. Toll free service is an interexchange service in which subscribers agree in advance to pay for all calls made to them using a predesignated toll free telephone number. Toll free numbers are contained in a centralized database, the Service Management System/800 (SMS/800) database, and use of the database is offered jointly by the BOCs through a tariff.⁵ This centralized toll free number administration system has the following components:

SMS/800 Database. The SMS/800 database contains all toll free numbers in the North American Numbering Plan, along with electronic records for those numbers. The records include information such as the identity of the subscribers' telephone numbers to which toll free calls will be routed (area code + NXX-XXXX), the identity of the interexchange carriers (IXCs) that will transport the calls, and

¹ In the Matter of Toll Free Access Codes, CC Docket No. 95-155.

² *Database Service Management, Inc. v. Beehive Telephone Company, Inc.*, Civ. No. 2:96-CV-188J (C.D. Utah Jan. 20, 1999). Following referral, the parties before the court presented the issues to this Commission in petitions for declaratory ruling filed by Beehive Telephone Company Inc. (Beehive) on January 29, 1999, and by Database Service Management, Inc. (DSMI) on February 17, 1999.

³ 47 U.S.C. § 251(e)(1).

⁴ 47 U.S.C. § 251(c)(3).

⁵ The tariffed service is described as "a national system which is used to update locally deployed databases," and is the focal point for initial service provisioning and all subsequent changes to the toll free subscriber's service. It supports number administration, creation and modification of customer records. *See* SMS/800 Functions Tariff F.C.C. No. 1 at 47.

billing information. The database is updated when toll free numbers are assigned or disconnected and reassigned.

Service Control Points (SCPs). Service control points (SCPs) are regional databases that contain routing instructions for the toll free numbers located in their particular geographic regions. They are owned and operated, usually by LECs, independently of the centralized SMS/800 database. Information from the centralized SMS/800 database is periodically downloaded to the SCPs. When a toll free number is dialed by a caller, the call is momentarily suspended while the LEC on whose network the call originates interacts with a regional SCP to obtain the necessary information to route the call, via the designated interexchange carrier, to its destination. Thus, unlike the centralized SMS/800 database, the SCPs primarily facilitate the routing of toll free calls.

3. The following entities play a role in toll free number administration:

The Bell Operating Companies (BOCs). The BOCs, which collectively created and own the SMS/800 database, provide for access to the SMS/800 database through a tariff.⁶ The BOCs contract with the SCP owner-operators to provide periodic updates and downloads of toll free number routing information stored in the SMS/800 centralized database.⁷ They also subcontract with several other entities to provide hardware, software, and maintenance services: the SMS/800 Data Center is operated by SBC Corporation, which provides hardware operation, performance monitoring, and SCP operator support; Telcordia (formerly Bellcore and also formerly owned by the BOCs) is the subcontractor that provides SMS/800 Software Support; and Sykes Enterprises is the subcontractor that operates the SMS/800 Help Desk. Representatives of the BOCs also comprise the SMS Management Team (SMT), which is responsible for coordination of SMS/800 services.

Database Services Management, Inc. (DSMI). DSMI, a subsidiary of Telcordia, is under contract with the BOCs' SMT, and serves as their Business Representative. In this capacity, DSMI maintains financial records and general oversight of the SMS/800 database, collects charges from users of the SMS/800 Tariff, and certifies potential users as RespOrgs to gain access to the SMS/800 database.⁸

Responsible Organizations (RespOrgs). RespOrgs are carrier and non-common carrier entities that are certified by DSMI to access and use information in the centralized SMS/800 database. RespOrgs search for and reserve toll free numbers for their customers, and create and maintain the associated call processing records that are stored in the centralized SMS/800 database. Under the terms of the SMS/800 Tariff, RespOrgs pay monthly charges for each number they reserve or manage. Currently there are approximately 200 RespOrgs.

Subscribers. Subscribers obtain their toll free numbers from RespOrgs, under individual customer agreements. Subscribers include both companies and individual consumers who use their toll free numbers for personal and business purposes, and for access to such services as voice mail and paging

⁶ SMS/800 Functions Tariff F.C.C. No. 1.

⁷ 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, *Report and Order*, CC Docket Nos. 93-129 and 86-10, 11 FCC Rcd at 15227, 15324 (*SMS Tariff Order*).

⁸ Letter from from Celia Nogales, Ameritech Director - Federal Relations to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket 95-155 (filed August 31, 1999); BOC Comments at 1-2, in NSD File Nos. L-99-87 and L-99-88.

devices.

B. History of Toll Free Service and Section 251 Requirements

4. In 1967, AT&T began providing toll free service. Following AT&T's 1984 breakup,⁹ the BOCs succeeded AT&T in providing toll free number "area-of-service routing," which is the routing of calls by local exchange carriers to the appropriate IXCs, depending upon the local access and transport area (LATA) in which the calls originated.¹⁰ Initially, the BOCs accomplished this by associating a particular NXX¹¹ with a particular carrier. That system, however, precluded "portability," which is the ability of subscribers to change IXCs while retaining the same toll free number. Thus, subscribers wishing to change their IXCs had to change their toll free numbers in order to do so.

5. In 1993, the Commission mandated that the BOCs develop a centralized database system to facilitate toll free number portability. Under this system, all toll free numbers are contained in a centralized database, and the LEC originating a call reads the entire number, interacts with the SCP to determine the IXC designated to carry the call, and transmits the call accordingly. Subscribers can thus change RespOrgs or IXCs without changing their toll free telephone numbers.¹² At the same time, the Commission also required that the service be offered as a common carrier service under tariff, to ensure that the service would be offered on a non-discriminatory basis and at reasonable rates.¹³

6. In 1995, the industry informed the Commission that available 800 toll free numbers were being depleted at an accelerated pace and were likely to run out before the scheduled roll-out of the first new toll free access code, 888, on March 1, 1996. The Commission therefore instituted the Toll Free Access Codes proceeding and proposed rules to ensure that toll free numbers would be allocated on a fair, equitable, and orderly basis.¹⁴ The Commission also took steps to conserve the use of toll free numbers to preclude a temporary shutdown of the toll free database system that might have resulted from an overload in the reservation process for the new 888 numbers.¹⁵

⁹ See *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd*, *Maryland v. United States*, 460 U.S. 1001 (1983). The Court ordered AT&T to divest its interest in the Bell Operating Companies (BOCs), which provided local exchange service.

¹⁰ Provision of Access for 800 Service, *Order*, CC Docket No. 86-10, 8 FCC Rcd 1423 (1993) (*CompTel Declaratory Ruling*).

¹¹ Telephone numbers are typically designated NPA-NXX-XXXX. The NXX, or the "central office code," is the series of three digits following the area code. The NXX is also referred to as the "exchange."

¹² *Id.*

¹³ *CompTel Declaratory Ruling*, 8 FCC Rcd at 1426-27.

¹⁴ Toll Free Access Codes, *Notice of Proposed Rulemaking*, CC Docket No. 95-155, 10 FCC Rcd 13692 (1995) (*NPRM*).

¹⁵ The Commission delegated to the Common Carrier Bureau authority to handle the issues essential to the March 1, 1996 opening of the 888 code. Toll Free Access Codes, *Order*, CC Docket No. 95-155, 11 FCC Rcd 3045 (1996). The Bureau then established an interim number conservation plan for 800 and 888 numbers, to protect the toll free database system from possible overload and shutdown during the number reservation process. Toll Free Access Codes, *Report and Order*, CC Docket No. 95-155, 11 FCC Rcd 2496 (1996).

7. In 1996, section 251 was added to the Communications Act as part of the Congressional effort to open local markets to competition.¹⁶ Section 251(c) specifically imposes certain additional obligations upon incumbent local exchange carriers (ILECs). Among other things, it requires ILECs to allow potential competitors to interconnect with their networks¹⁷ and to give them access to unbundled network elements (UNEs) so that the competitors can provide the same services to end-users that the ILECs provide.¹⁸ Only UNEs that are designated by the Commission are subject to those requirements.¹⁹ Section 251(e) requires the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."²⁰ It also requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."²¹

8. In 1997, in connection with the *Toll Free Access Codes Second Report and Order*, the Commission sought comment on who should administer the SMS/800 database system in light of the requirements of section 251.²² Following receipt of comments, the Commission in the *Third Report and Order* concluded that, as then structured, the administration of the toll free number database by DSMI (then a subsidiary of the BOC-owned Bellcore) was inconsistent with the requirement in section 251(e) that the numbering administrator be impartial.²³ The Commission stated, however, that the record was not adequate to determine who should administer the toll free number database. Accordingly, in the *Third*

¹⁶ The Telecommunications Act of 1996 (1996 Act) amended the Communications Act of 1934. Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act added section 251, 47 U.S.C. § 251.

¹⁷ 47 U.S.C. § 251(c)(2).

¹⁸ 47 U.S.C. § 251(e), 251(c)(3).

¹⁹ *AT&T Corp., et. al. v. Iowa Utilities Board et. al.*, 119 S. Ct. 721, 734-36 (1999).

²⁰ 47 U.S.C. § 251(e)(1).

²¹ 47 U.S.C. § 251(e)(2). Section 251(d)(1) directs the Commission to take all actions necessary to establish regulations implementing section 251 within six months of passage of the 1996 Act, which was August 8, 1996. 47 U.S.C. § 251(d). The Commission in the *Second Report and Order* determined that the 1996 Act required it to commence rather than complete the rulemaking process with respect to toll-free numbering before August 8, 1996 and therefore concluded that it had complied with this statutory deadline. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392 (1996) (*Second Report and Order*), *recon. denied*, 14 FCC Rcd 16559 (1999), *aff'd*, *Beehive Telephone Co. v. FCC* No. 99-1328 (D.C. Cir., decided May 18, 2000) (*Beehive v. FCC*). On review, the Court of Appeals found the Commission's determination to be reasonable. *Beehive v. FCC*, No. 99-1328.

²² Toll Free Access Codes, *Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-155, 12 FCC Rcd 11162 (1997). The Commission there also adopted rules governing RespOrgs' retrieval of toll free numbers from the SMS/800 database, such as reservation, activation, and disconnection, and warehousing and hoarding of numbers, pursuant to its 1995 proposals in the *NPRM*, to ensure fair, equitable, and orderly allocation of toll free numbers. (*Second Report and Order*).

²³ Toll Free Access Codes, *Third Report and Order*, CC Docket No. 95-155, 12 FCC Rcd 23040 (1997) (*Third Report and Order*) (which was combined with Administration of the North American Numbering Plan, *Third Report and Order*, CC Docket No. 92-237, 12 FCC Rcd 23040 (1997) (*Number Administration Third Report and Order*)).

Report and Order the Commission directed the North American Numbering Council (NANC) to examine the issue of toll free number administration and recommend an entity to assume the duties of toll free number administration.²⁴

9. In 1998, in response to the Commission's directive, the NANC submitted a letter recommending that DSMI remain the toll free number database administrator.²⁵ The NANC stated in its letter that Bellcore had recently been sold to Science Applications International Corporation (SAIC), which is not identified with any particular segment of the telecommunications industry, and determined that its subsidiary DSMI was therefore an impartial and neutral administrator.²⁶ In a public notice, the Commission requested comments on the NANC's recommendation.²⁷ In their comments, Telcordia, Ameritech, Bell Atlantic, BellSouth, SBC and US West generally supported the NANC's recommendation, whereas Beehive, AT&T, MCI WorldCom, and Sprint (non-BOC RespOrgs) strongly opposed it.²⁸ We address the NANC's recommendation below.²⁹

C. History of the Beehive-DSMI Dispute

10. The petitions for declaratory ruling that we resolve in this Order arise from a dispute originating in 1989, at which time Beehive Telephone Company, Inc. (Beehive), an incumbent local exchange carrier, received from Bellcore 10,000 toll free numbers in the "800" numbering plan area with the NXX prefix 629. In 1993, when the centralized database system was created, Beehive was authorized to act as a RespOrg. In 1994, after Beehive failed to pay service and late payment charges in accordance with the terms of the SMS/800 Tariff, DSMI revoked Beehive's RespOrg status and suspended services to Beehive. DSMI then requested that Beehive direct its customers to select a new RespOrg. After Beehive failed to do so, DSMI began disconnecting the numbers.

11. In 1996, DSMI filed a suit in federal district court to collect Beehive's unpaid charges.³⁰ Beehive then tendered payment to DSMI, but also filed an answer and a five-count counterclaim. In 1997, Beehive re-qualified as a RespOrg, and amended its counterclaim by adding two more counts. In late 1998,

²⁴ The NANC is a federal advisory committee created to advise the Commission on numbering administration issues.

²⁵ Also in 1998, the Commission ruled on the roll-out of the 888, 877, and subsequent codes, in Toll Free Access Codes, *Fourth Report and Order and Order and Memorandum Opinion and Order*, CC Docket No. 95-155, 13 FCC Rcd 9058 (1998).

²⁶ Letter from Alan C. Hasselwander, Chairman, North American Numbering Council, to A. Richard Metzger, Jr., Chief, Common Carrier Bureau, CC Docket No. 95-155 (filed March 25, 1998) (*NANC Letter*).

²⁷ Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation that Database Services Management, Inc. Remain the Toll Free Database Administrator, *Public Notice*, CC Docket No. 95-155, NSD File No. L-98-85, DA-98-1112 (rel. June 11, 1998).

²⁸ Comments were filed July 1, 1998, by Bellcore, MCI Telecommunications Corporation, and Sprint Communications Company. Replies were filed July 13, 1998, by Bellcore, BellSouth, Beehive, MCI, and (jointly) Ameritech, Bell Atlantic, SBC, and US West. An ex parte statement dated August 31, 1998, was filed by Ameritech on behalf of the BOCs.

²⁹ See paras. 15-25.

³⁰ *DSMI v. Beehive*, No. Civ. No. 2:96-CV-188J (C.D. Utah filed Mar. 1, 1996).

the United States Court of Appeals for the Tenth Circuit remanded the case to the district court with directions to refer all seven counts of Beehive's amended counterclaim to this Commission under the doctrine of primary jurisdiction.³¹

12. In January and February 1999, following referral, Beehive and DSMI filed separate petitions for declaratory ruling with the Commission, both presenting the same seven issues that Beehive raised in its counterclaims. Beehive ultimately seeks an order that would require DSMI to pay it damages and to restore the 10,000 numbers in question to Beehive's control.³² The seven issues include whether DSMI is impartial under section 251(e)(1), a matter that was raised in the Toll Free Access Codes proceeding. The remaining issues are: (1) whether access to the SMS/800 database system is legally tariffed as a common carrier service or whether it must be provided exclusively as a UNE under section 251(c); (2) whether the costs of the SMS/800 system are borne by all carriers on a competitively neutral basis, as required by section 251(e)(2);³³ (3) whether DSMI may legally discontinue providing SMS/800 service; (4) whether DSMI may administer the SMS/800 system under tariff even though DSMI is not a common carrier; (5) whether DSMI gave proper notice before discontinuing service to Beehive; and (6) whether Beehive held a constitutionally protected property interest in toll free numbers that DSMI violated by discontinuing service to Beehive.³⁴

13. In November 1999, the Commission requested comments on the issues raised in the petitions for declaratory ruling.³⁵ In the comments filed, discussed below, MCI WorldCom supports Beehive on all issues, the BOCs support DSMI on all issues; and Sprint supports Beehive on some issues and DSMI on others.³⁶

III. DISCUSSION

14. We first address the outstanding issues in the *Toll Free Access Codes* proceeding regarding whether DSMI is an impartial toll free number administrator. We then address the seven issues raised in Beehive's and DSMI's petitions for declaratory ruling.

³¹ *DSMI v. Beehive*, No. 98-4117 (10th Cir. Nov. 24, 1998).

³² Beehive Petition for Declaratory Ruling, Attachment 2 at 24 – 25.

³³ Section 251(e)(2) requires the costs of number administration arrangements and number portability to be borne by all carriers on a competitively neutral basis. 47 U.S.C. § 251(e)(2).

³⁴ Beehive Petition for Declaratory Ruling, Attachment 2 at 22. The numbers in the "629" prefix correspond to "MAX" or "MAY" on the telephone keypad.

³⁵ Petitions For Declaratory Ruling Filed By Beehive Telephone Company and Database Services Management, Inc., *Public Notice*, CC Docket No. 95-155, NSD File Nos. L-99-87 and L-99-88, DA 99-2400 (rel. Nov. 2, 1999).

³⁶ Comments were filed on December 6, 1999, by the BOCs jointly (Bell Atlantic, BellSouth, SBC, and US West), MCI WorldCom, and Sprint. Replies were filed on December 16, 1999, by Beehive DSMI, and MCI WorldCom. Also, on March 1, 1999, Beehive filed a motion to strike DSMI's petition for declaratory ruling, arguing that DSMI's petition constituted a late-filed reply to Beehive's petition. We deny the motion, having sought and received comments on both petitions in the interests of developing a complete record.

A. Toll Free Number Access Codes Proceeding

15. In the *Third Report and Order*, the Commission concluded that, as then structured, DSMI's administration of the toll free number database was inconsistent with section 251(e)(1). In this section, we address whether DSMI currently is impartial within the meaning of section 251(e)(1). We find below that DSMI meets the impartiality requirements in section 251(e)(1) of the Act, and thus may continue to serve as the toll free number database administrator. We also seek recommendations from the NANC on restructuring the ownership and operation of the current system of toll free number administration, and on the technical requirements for selecting a toll free number administrator through a competitive bidding process.

1. Evaluation of DSMI's Impartiality

16. Section 251(e) requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering and ensure that such numbers are made available on an equitable basis, and requires the costs of number administration to be borne by all telecommunications carriers on a competitively neutral basis.³⁷ The Commission set forth criteria for determining whether an entity meets these neutrality requirements in section 52.12 of its regulations in the *Number Administration Third Report and Order*.³⁸ Recently, the Commission applied these requirements to determine the neutrality of an entity seeking to replace Lockheed Martin IMS Corporation as the North American Numbering Plan Administrator, which administers standard geographic telephone numbers.³⁹ Although the toll free number administration system differs from the method used to administer the North American Numbering Plan, both are "telecommunications numbering" administrative systems, and thus are governed by section 251(e) and the Commission's neutrality regulations implementing this provision.

17. Because DSMI is the entity that administers the toll free numbering system pursuant to the SMS Tariff,⁴⁰ we apply the same neutrality criteria to DSMI that we applied in evaluating the neutrality of the NANP administrator.⁴¹ The neutrality criteria serve three purposes.⁴² First, they ensure that entities seeking to participate in the telecommunications marketplace obtain timely and efficient access to numbering resources, and that no particular industry segment is favored or disadvantaged. The criteria also ensure that the administrator remains neutral in order to maintain the trust and confidence of the entities that must submit sensitive information to the administrator in its numbering administration activities. Finally, the criteria ensure that the administrator is able to comply with its obligations without excessive Commission oversight. The first two criteria are objective, quantifiable measures intended to prevent the administrator from maintaining financial relationships with telecommunications service

³⁷ 47 U.S.C. §§ 251(e)(1), (2).

³⁸ 47 C.F.R. § 52.12.

³⁹ Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business, *Order*, CC Docket No. 92-237, NSD File No. 98-151, FCC 99-346 (rel. Nov. 17, 1999) (*Lockheed Order*).

⁴⁰ See *Third Report and Order*, 12 FCC Rcd at 23089.

⁴¹ See *Third Report and Order* and *Lockheed Order*. In both these Orders, we applied the criteria set forth in the Commission's regulations. See 47 C.F.R. § 52.12(a)(1).

⁴² *Lockheed Order* at para. 24.

providers that could exert control over the decisions and activities of the administrator or otherwise compromise its impartiality. The third criterion affords the Commission broad discretion to determine whether the entity is subject to undue influence by parties with a vested interest in the outcome of numbering administration activities.⁴³

18. The Commission's previous determination that the administration of the toll free number database by DSMI was inconsistent with the impartiality requirement in section 251(e) was based on the relationship between the BOC-owned Bellcore (parent) and DSMI (subsidiary). The Commission did not, at that time, determine whether DSMI would be subject to undue influence under the third criterion of the neutrality test. Rather than disqualify DSMI simply because of its relationship with the BOCs, however, we think the better approach is to evaluate DSMI's neutrality under all three neutrality criteria.

19. *Criterion One: Affiliate Relationship with Telecommunications Providers.* Section 52.12(a)(1)(I) of our regulations provides that the administrator may not be an affiliate of any telecommunications service provider(s) as defined in the Telecommunications Act of 1996.⁴⁴ An "affiliate" is a person who controls, is controlled by, or is under the direct or indirect common control of another person. "A person shall be deemed to control another if such person possesses, directly or indirectly . . . (i) an equity interest of at least ten percent in the other person; (ii) the power to vote at least ten percent of the equity interest in the other person; or (iii) the power to direct or cause the direction of the management and policies of such other person" ⁴⁵

20. DSMI is a subsidiary of Telcordia, the successor to Bellcore, which in turn is a wholly owned subsidiary of Science Applications International Corporation (SAIC).⁴⁶ SAIC is an employee-owned company with no financial affiliations with any telecommunications service provider, and neither Telcordia nor SAIC is itself a telecommunications provider.⁴⁷ Following the sale of Bellcore to SAIC, the NANC opined that DSMI, because it is no longer a subsidiary of an entity owned by the BOCs, is an impartial and neutral administrator.⁴⁸

21. DSMI has an affiliate relationship with both Telcordia and SAIC, neither of which is a telecommunications service provider. Nothing in the record indicates that DSMI is an affiliate, as defined in our rules, of any other telecommunications service provider. We therefore conclude that the requirements of Criterion One are satisfied.

22. *Criterion Two: Debt or Revenues from a Telecommunications Provider.* Section 52.12(a)(1)(ii) of our regulations provides that neither the administrator nor any of its affiliates may issue a

⁴³ *Id.*

⁴⁴ 47 C.F.R. § 52.12(a)(1).

⁴⁵ *Id.*

⁴⁶ The sale of Bellcore to SAIC was completed on November 14, 1997. Letter from Louise L. M. Tucker, Senior Counsel – Washington (Bellcore) to the Commission (dated November 17, 1997).

⁴⁷ Bellcore Reply at 4.

⁴⁸ *NANC Letter* ("Based on [the sale of Bellcore to SAIC], it is the opinion of the NANC that the DSMI is an impartial and neutral administrator.").

majority of its debt to, nor derive a majority of its revenues from, any telecommunications provider.⁴⁹ According to Telcordia, DSMI does not carry debt “as a separate entity,”⁵⁰ and adds that its own debt is not derived from any telecommunications service provider, but rather, from public financial institutions.⁵¹ Telcordia also claims that neither it nor SAIC derives a majority of its revenues from any one telecommunications service provider.⁵² Nevertheless, we find that DSMI’s income is primarily received from its relationship with the SMT, which is comprised entirely of BOCs. Although the BOCs are separate entities, we find that their interests are sufficiently aligned that they may be deemed collectively to be a telecommunications provider. Thus, the requirements of Criterion Two are not satisfied.

23. *Criterion Three: Undue Influence.* We now consider section 52.12(a)(1)(iii) of our rules, which provides that, notwithstanding the first two neutrality criteria, we may exercise our discretion to determine whether the administrator will be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities. We must determine, therefore, whether we believe DSMI will be subject to undue influence by any party with an interest in the outcome of numbering administration and activities.

24. DSMI is under contract to perform certain administrative duties relating to toll free number administration, including day-to-day management and oversight of SMS/800 services.⁵³ As discussed below, the terms of the SMS/800 Tariff are uniquely structured to ensure that the administration of toll free numbers is competitively neutral. Because DSMI may not exercise its discretion to administer toll free number services in a manner inconsistent with the tariff, we find that, under these specific circumstances, DSMI is not subject to undue influence by the BOCs or by any other entity with an interest in the administration of toll free numbers.

25. We are persuaded that DSMI acts as an impartial administrator because we agree with DSMI’s assessment that the unique arrangement established in the SMS/800 Tariff and the Commission’s rules ensure that it performs its activities as overseer of the day-to-day management of the SMS/800 system without discrimination. Under the tariff, the administration of toll free numbers is impartial because DSMI does not determine which RespOrgs may access or manage which toll free numbers. Rather, RespOrgs retrieve toll free numbers themselves, via computer interface.⁵⁴ As DSMI observes, RespOrgs have direct electronic access to the SMS/800 database, and thus can assign to their customers

⁴⁹ 47 C.F.R. § 52.12(a)(1)(ii).

⁵⁰ Bellcore Reply at 5.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See* para. 3, *supra*.

⁵⁴ Although AT&T, MCI, and Sprint object that the BOCs have implemented an expensive computerized method enabling smaller (“dial-up”) RespOrgs to retrieve numbers from the SMS/800 database, even though those RespOrgs account for less than 10% of toll free numbers, that enhancement appears to be pro-competitive and does not suggest lack of impartiality. Ex Parte Presentation letter from James Spurlock, AT&T, Henry G. Hultquist and Mary DeLuca, MCI WorldCom, and Michael B. Fingerhut and Norina T. Moy, Sprint, to Magalie Salas, Secretary, Federal Communications Commission, dated January 7, 2000, at 11 (AT&T, MCI WorldCom, Sprint January 7, 2000, Ex Parte Letter).

any available toll-free numbers.⁵⁵ Under the tariff, DSMI exercises no discretion or judgment in permitting or prohibiting particular RespOrgs from obtaining numbers.⁵⁶ Nor do the BOCs direct the roll-out of new toll free access codes. The industry as a whole, through the Alliance for Telecommunications Industry Solutions (ATIS), determines the implementation of new toll free codes.⁵⁷ Because of this particular structure, DSMI is insulated from undue influence by the BOCs or any other entity with an interest in the outcome of numbering administration and activities. We find, rather, that the terms in the SMS/800 Tariff require the impartial administration of toll free numbers. Thus, the terms of the SMS/800 tariff also preclude the BOCs from exercising undue influence over DSMI which, in any event, exercises no discretion in the administration of toll free numbers.⁵⁸ Consequently, we disagree with Beehive's argument that DSMI cannot be deemed impartial when it acts as the agent of the BOCs under the SMS/800 Tariff.⁵⁹ We therefore conclude that, notwithstanding DSMI's failure to meet the requirements of Criterion Two, because it receives a majority of its revenues from the BOCs, DSMI is an impartial administrator under section 251(e) of the Act and consequently may continue to serve as the SMS/800 system administrator.

2. Toll Free Administrative System Structure

26. Although we have concluded that DSMI is impartial under section 251(e) and thus qualified to continue to serve as the SMS/800 system administrator, we question whether the current SMS/800 system is the best available means of administering toll free numbers. The SMS/800 system was tariffed by the BOCs at the Commission's direction in 1993. At that time, the Commission determined that the BOCs' provision of the service on a tariffed basis was preferable to the BOCs' request to offer access to the centralized database through private agreements. The Commission believed that the tariff would contain more enforceable safeguards and be subject to more stringent Commission oversight, thus reducing the likelihood of undue influence by the BOCs. We observe, however, that much has changed since then. The door to competition in the local exchange marketplace has been opened by the Telecommunications Act of 1996. This has fundamentally altered the structure of the local telecommunications market; for example, the BOCs now represent a segment of the telecommunications industry in which at least some

⁵⁵ DSMI Reply Comments at 5-6; BOC Comments at 3-4. The regulations at 47 C.F.R. §§ 52.107 provide that available toll free numbers in the SMS/800 database are maintained in "spare status" and that a RespOrg may retrieve a number first come, first served, by placing the number in "reserved status," as long as the RespOrg has an identified customer for that number. Numbers in "reserved status" must be returned to "spare status" if they are not actually assigned to the subscriber within 45 days ("assigned status"). Activated numbers ("working status") must be returned to "spare status" after they are disconnected ("disconnect status"). Several additional procedures govern other situations, such as "unavailable status" for numbers in special circumstances and "suspend status" for numbers in billing disputes between the RespOrg and customer.

⁵⁶ See 47 C.F.R. section 52.13. By contrast, the administration of non-toll free numbers is very different from the administration of toll free numbers. Under the Commission's rules, the North American Numbering Plan Administrator (NANPA) exercises discretion in deciding which carriers are assigned which numbers, area codes, and special access codes (such as 500 or 900). The NANPA processes individual applications from carriers that request numbers, and it decides, subject to constraints set by the Commission, whether to grant or deny the applications.

⁵⁷ See, e.g., letter from Ron Havens, OBF Moderator, ATIS, to L. Charles Keller, Chief, Network Services Division, CC Docket No. 95-155 (filed February 4, 2000)(addressing 866 and 855 codes).

⁵⁸ For DSMI to do otherwise would be a violation of the tariff.

⁵⁹ Beehive Reply Comments at 2.

competition exists, unlike seven years ago when the tariffed system was established. The significant growth in competition has also brought about a marked increase in the demand for more toll free and other numbers, as new competitors seek to serve their customers and new services are offered. Thus, continued ownership and control by the BOCs over the toll free number administration system may no longer be warranted for competitive reasons.

27. We are also concerned about whether, from a practical standpoint, ownership and control of the centralized database by any telecommunications service provider is an appropriate structure for toll free numbering administration because of service quality issues that have arisen and apparently remain unresolved. In a recent letter to the Commission, ATIS observed that RespOrgs have experienced increasing difficulties with the SMS/800 system since 1997, noting that system congestion has increased as Numbering Plan Area splits have increased.⁶⁰ Additionally, some commenters in this proceeding claim to have experienced poor service under the SMS/800 Tariff.⁶¹ These commenters, however, do not attribute the service quality problems to DSMI, but to the BOCs, who own the database and offer the service through the SMS/800 Tariff.⁶² We decline to address these specific allegations in the context of this proceeding; such alleged instances of non-compliance with the terms of the SMS Tariff are best addressed through the complaint process.⁶³ Nevertheless, we recognize, generally, the need to consider whether these and other issues can be addressed and resolved through restructuring of the current administration system.

28. We look to our Federal Advisory Committee on numbering issues, the NANC, for a recommendation on how best to administer toll free numbers. We ask the NANC to address whether a system of administration similar to that used to administer the NANP or a different system should be established. Among the alternatives NANC should consider is whether the ownership and operation of the centralized toll free database system should be transferred to a non-government and/or non-carrier entity, and whether SMS/800 service should continue to be provided under tariff. Additionally, we seek recommendations from the NANC to facilitate the selection of the administrator through a competitive bidding process similar to the process used to select the North American Numbering Plan Administrator.⁶⁴ Specifically, we ask the NANC to develop the necessary technical requirements for toll free number administration. We direct the NANC to submit its recommendations to the Commission within 180 days of the effective date of this Order. Upon receipt of the NANC's recommendations and public comment, we will move expeditiously to determine whether it is in the public interest to restructure the ownership and operation of the current system of toll free number administration, and, if so, whether a new toll free number administrator should be selected.⁶⁵

⁶⁰ Letter from Ronald D. Havens, OBF Moderator, to L. Charles Keller, Chief, Network Services Division, Common Carrier Bureau, CC Docket No. 95-155 (filed Feb. 15, 2000).

⁶¹ See *January 7, 2000, Ex Parte Letter* (also complaining about high tariff rates). See also MCI Comments at 3 - 4 and Sprint Comments at 2 - 3, both filed July 1, 1998, and WorldCom Reply at 3 - 4, filed July 13, 1999.

⁶² *Id.*

⁶³ To the extent that parties can demonstrate that the BOCs or their designees are not administering toll free numbers pursuant to the terms of their own tariff, they may pursue an enforcement action to ensure that the terms of the tariff are met. See sections 1.701 - 1.736 of the Commission's rules, 47 C.F.R. §§ 1.701 - 1.736.

⁶⁴ See *Third Report and Order*.

⁶⁵ In the *Second Report and Order*, the Commission sought comment on whether access to the database should still be provided pursuant to tariff if there is ultimately a new administrator of the database and if so, what party or (continued....)

B. Petitions for Declaratory Ruling

29. We now address the seven issues referred to us and presented by Beehive and DSMI in their petitions for declaratory ruling, many of which are resolved by our conclusions above.

30. Issue 1: Whether the SMS/800 system may be provided under tariff, as it is currently, or whether it must be provided exclusively under intercarrier agreements pursuant to sections 251 and 252. The Commission previously determined that access to the SMS/800 database is a common carrier service that must be offered under tariff.⁶⁶ The Commission affirmed this finding and has upheld the validity of the SMS/800 Tariff in subsequent orders.⁶⁷

31. The Commission has also determined that access to the SMS/800 database and the SMS/800 system must be unbundled.⁶⁸ In the *Local Competition First Report and Order*, the Commission stated that Call-Related Databases must be unbundled. The Commission specifically identified access to the SMS/800 database as a UNE.⁶⁹ In the *Local Competition Third Report and Order*, in which we re-evaluated which network elements must be unbundled in accordance with the remand from the U.S. Supreme Court, we again required that incumbent LECs unbundle access to the centralized SMS/800 database.⁷⁰

32. Section 251(c)(3) requires ILECs to “provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis. . . .”⁷¹ Beehive contends that under section 251 (c)(3), common carriers such as

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entity should file the tariff. *Second Report and Order*, 12 FCC Rcd at 11225. Public comment on the NANC’s recommendations will also serve to refresh the record on this related matter.

⁶⁶ In the *CompTel Declaratory Ruling*, the Commission emphasized that offering the SMS/800 system under tariff was essential in order to have a fairly administered centralized database. 8 FCC Rcd at 1426. The Commission later reaffirmed its ruling that providing access to the SMS/800 database is a common carriage service. *Beehive Telephone, Inc. and Beehive Telephone Nevada, Inc., Complainants v. The Bell Operating Companies, Memorandum Opinion and Order*, File No. E-94-57, 12 FCC Rcd 17930 (1997)(*1997 Beehive Complaint Order*).

⁶⁷ *Beehive Telephone, Inc. and Beehive Telephone Nevada, Inc., Complainants v. The Bell Operating Companies, Memorandum Opinion and Order*, File No. E-94-57, 10 FCC Rcd 17930 (1997)(*1997 Beehive Complaint Order*); *800 Data Base Access Tariffs and the 800 Service Management System Tariff*, CC Docket No. 93-129 and *Provision of 800 Services*, CC Docket 86-10, *Report and Order*, 11 FCC Rcd 15227, 15323 – 15350 (1996).

⁶⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15741; *Third Report and Order*, 12 FCC Rcd at para. 403.

⁶⁹ *Local Competition First Report and Order*, 11 FCC Rcd at 15741 (“Thus, for example, we find that it is technically feasible for incumbent LECs to provide access to the . . . Toll Free Calling Database . . .”). The Commission also found that service management systems must be unbundled. *Id.* at 15746-50.

⁷⁰ *Third Report and Order*, 12 FCC Rcd at paras. 402-03.

⁷¹ 47 U.S.C. § 251(c).

Beehive, Sprint, and MCI have the right to purchase access to the SMS/800 database as a UNE. DSMI and the BOCs argue that section 251(c)(3) applies only to the BOCs' separately owned networks and, because the BOCs jointly own the SMS/800 database, it is not a UNE.⁷² Beehive also contends that the 1996 Act precludes the Commission from continuing to require that access to the SMS/800 database be tariffed under section 203 of the Act because we determined that the SMS/800 database system is also accessible as a UNE under section 251(c).⁷³

33. Although we have found that access to the SMS/800 database and the SMS/800 system are available as UNEs pursuant to section 251(c)(3) of the Act, we expressly reject Beehive's argument that this invalidates the existing interstate tariff. The Commission recognized in the *Local Competition Third Report and Order* that ILECs may offer a tariffed retail service that is functionally equivalent to a specific UNE. The Commission found that, in determining whether or not an ILEC should provide access to a UNE, it would assign little weight to the availability of the tariff as an alternative because Congress gave competitive LECs a distinct opportunity, through section 251(c)(3), to use UNEs regardless of the availability of tariffed retail or resold services.⁷⁴

34. The findings in the *Local Competition Third Report and Order* can in no way be read to invalidate a tariffed offering simply because that offering could be equivalent to a specific UNE. An ILEC has a duty under section 251(c)(3) to provide access to UNEs to a requesting telecommunications carrier for the provision of a telecommunications service while a tariffed offering available under section 203(c) of the Act is available to any person.⁷⁵ Beehive's request to invalidate a tariffed offering simply because it is available as a UNE ignores a fundamental difference between sections 251(c)(3) and 203(c) of the Act, and would effectively deny access to the offering to entities that are not eligible to obtain UNEs under section 251(c)(3).

35. Issue 2: Whether DSMI is an impartial administrator of the SMS system, under section 251(e). We have concluded in this Order that DSMI is impartial and may continue to serve as a toll free administrator.⁷⁶

36. Issue 3: Whether the SMS/800 system complies with section 251(e)(2), which requires the costs of number administration arrangements and number portability to be borne by all carriers on a competitively neutral basis. RespOrgs, the users of the SMS/800 system, bear the costs associated with SMS/800 system administration in proportion to the quantity of toll free numbers they reserve or manage. Because the same rates are assessed against all RespOrgs under the SMS/800 Tariff, we find that the costs of toll free number administration are borne on a competitively neutral basis in accordance with the requirements of section 251(e)(2).⁷⁷

⁷² BOC Comments at 5, DSMI Reply at 4.

⁷³ Beehive Reply at 6.

⁷⁴ See *Local Competition Third Report and Order*, 15 FCC Rcd at 3732.

⁷⁵ 47 U.S.C. §§ 251(c)(3), 203(c).

⁷⁶ See paras. 16 – 25, *supra*.

⁷⁷ 47 U.S.C. § 251(e)(2) (providing that numbering costs “shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission”).

37. Beehive contends that the costs of administering toll free numbers cannot be recovered through SMS Tariff charges because the RespOrgs bearing the costs are “far from being all the telecommunications carriers.”⁷⁸ We disagree. The SMS Tariff charges relate only to the direct administrative costs of operating the SMS/800 database system. Other aspects of toll free numbering administration, which include assignment and activation of toll free area codes (*i.e.*, 800, 888, 877), are performed by the NANPA,⁷⁹ and the costs for these functions are borne by all carriers under the number administration cost recovery mechanism.⁸⁰ Further, we believe that SMS/800 system administration costs are borne in a competitively neutral manner because, under the tariff, costs are borne only by the parties causing the costs. To require all carriers, even those that do not use the SMS/800 system, to bear these administrative costs, some of which can be attributed to RespOrgs that are not common carriers, contravenes the long-standing principle that costs should be borne by the cost-causer.⁸¹ As DSMI observes, recovering costs directly from all carriers, including those that do not use the SMS/800 system, would give carriers that are RespOrgs a competitive advantage over other carriers.⁸² We do not believe that Congress, in enacting section 251(e)(2), intended to require carriers that do not use the SMS/800 system to bear the costs of administering the system. Thus, we find that recovering the administrative costs of operating the SMS/800 system only from RespOrgs in proportion to the toll free numbering resources reserved and managed by them is competitively neutral and appropriate.

38. Issue 4: Whether DSMI may legally discontinue providing SMS/800 service. We find that DSMI, as the administrator of the SMS/800 database, may discontinue providing SMS/800 service in accordance with the terms of the SMS/800 Tariff if the RespOrg is not in compliance with the requirements in the tariff. Moreover, we find that DSMI’s discontinuance of service to Beehive was warranted; despite ample warning several months prior to termination, Beehive did not pay for the services it received under the tariff.

39. Issue 5: Whether DSMI may administer the SMS/800 system under tariff even though it is not a common carrier. Although it is not a common carrier, DSMI may administer the SMS/800 system under the tariff pursuant to its contract with the BOCs. Common carriers are required to file tariffs under the Communications Act;⁸³ nevertheless, they may also act through other entities in providing services under the Act.⁸⁴ As we have stated before, “there is nothing in section 203 which colorably suggests that

⁷⁸ Beehive Reply at 2 – 3.

⁷⁹ See, e.g., INC Guidelines for NPA Allocation Plan and Assignment, INC 96-0308-011 (Reissued Feb. 28, 2000) (stating that the NANPA, as the NPA Code Administrator, receives requests for and assigns all NPAs, including Easily Recognizable Codes (ERCs) such as those reserved for toll free service).

⁸⁰ See 47 C.F.R. § 52.17. Under this mechanism, all telecommunications carriers contribute to the costs of numbering administration based on their gross revenues from the provision of telecommunications service.

⁸¹ See, e.g., Investigation of Interstate Access Tariff Non-Recurring Charges, Phase I, Part 3, *Memorandum Opinion and Order*, CC Docket No. 85-166, 2 FCC Rcd 3498, 3501 - 02 (1987).

⁸² DSMI Reply at 8. As users of the system, carriers that are RespOrgs would receive a service in exchange for their contribution, whereas carriers that are non-users would receive nothing.

⁸³ 47 U.S.C. §§ 203 (“Schedule of Charges”).

⁸⁴ 47 U.S.C. § 217 (“Liability of Carrier for Acts and Omissions of Agents”). Section 217 states that, in construing and enforcing the provisions of the Act, “. . . the act, omission, or failure of any office, agent or other person . . . (continued....)

Congress intended to prohibit carriers from using agents to enforce provisions of their tariffs.”⁸⁵ It is not unusual for a common carrier that files a tariff to select an agent to perform certain functions associated with provision of a tariffed service. The National Exchange Carrier Association (NECA), for example, is not a common carrier, but it files, bills, and collects charges contained in interstate access tariffs on behalf of the issuing common carriers.⁸⁶ Similarly, DSMI, although it is not a common carrier, acts as the business representative of the SMT, which is comprised of the BOCs, and provides day-to-day management and oversight of the tariffed services. We find nothing inappropriate about the BOCs’ selection of an entity that is not a common carrier to perform certain tariff-related functions on their behalf.

40. Issue 6: Whether DSMI gave proper notice before discontinuing service to Beehive. Beehive alleges that DSMI violated the tariff because DSMI terminated Beehive’s service without notice.⁸⁷ Section 2.1.8(A) of the tariff requires 30 days’ written notice prior to terminating a Resp Org’s access to the SMS/800 database system. DSMI states that it provided written notice on three separate occasions, with its last letter dated March 22, 1994, and Beehive doesn’t dispute receipt of these letters.⁸⁸ More than 30 days later, on April 26, 1994, Beehive’s service was suspended.⁸⁹ We therefore find that DSMI’s notice to Beehive was proper.

41. Issue 7: Whether Beehive held a constitutionally protected property interest in toll free numbers that DSMI violated by discontinuing service to Beehive. It is well-established that no entity has a proprietary or ownership interest in any numbers, including toll free numbers.⁹⁰ Beehive maintains that it was deprived of a constitutionally protected property or ownership interest when DSMI disconnected its 800-629-XXXX numbers, reasoning that the opportunity to make use of numbers has marketing value that may not simply be taken away. On the other hand, DSMI contends that numbers are a public resource, not owned by individuals.⁹¹ We find that Beehive has no property or ownership interest, nor does any RespOrg or subscriber have an ownership interest in a particular number. Thus, DSMI violated no constitutionally

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shall be deemed to be the act, omission or failure of such carrier or user as well as that of the person.” It does not require that the agent be a common carrier.

⁸⁵ In the Matter of Communique Telecommunications, Inc. d/b/a/ Logical Application for Review of the Declaratory Ruling and Order Issued by the Common Carrier Bureau, *Memorandum Opinion and Order*, FCC 99-80, rel. Aug. 9, 1999 at paras. 19 and 24.

⁸⁶ NECA Tariff No. 4.

⁸⁷ Beehive Reply at 16.

⁸⁸ DSMI Reply at 11 (referring to letters dated November 29, 1993, February 14, 1994, and March 22, 1994).

⁸⁹ DSMI Addendum to Petition of Database Service Management, Inc. for Expedited Declaratory Ruling at 2.

⁹⁰ The Commission stated in the *Second Report and Order* that “telephone companies do not ‘own’ codes or numbers, but rather administer their distribution for the efficient operation of the public switched telephone network” 12 FCC Rcd at 11185-86 (citing Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Declaratory Ruling*, 2 FCC Rcd 2910, 2912 (1987)). The SMS/800 Tariff comports with this policy, providing, “No individual or entity (*e.g.*, subscriber/assignee, service provider, etc.) shall acquire any interest in, or proprietary right to, any 800 telephone number assigned to the 800 subscriber.” Section 2.1.7, Provision and Ownership of 800 Telephone Numbers.

⁹¹ Beehive Reply at 16-17.

protected property interest by discontinuing service.⁹²

42. Moreover, Beehive is not entitled to return of the specific toll free numbers in the 629 prefix that DSMI disconnected. As DSMI and its supporters assert, the Commission's rules governing RespOrg retrieval of numbers from the SMS/800 database require disconnected numbers to be put into the spare pool of numbers, to be available to others on a first-come, first-served basis.⁹³

IV. ORDERING CLAUSES

43. IT IS ORDERED, pursuant to sections 1, 4(i), and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 251, that this FIFTH REPORT AND ORDER in CC Docket No. 95-155, and these ORDERS in NSD File Nos. L-99-87 and L-99-88 are hereby ADOPTED.

44. IT IS FURTHER ORDERED that the Motion to Strike and Response to Request for Expedited Action filed by Beehive Telephone Company, Inc. on March 1, 1999 IS DENIED.

45. IT IS FURTHER ORDERED that the Secretary SHALL SEND a copy of this Order to the United States District Court for the District of Utah, Central Division.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁹² We agree with DSMI, the BOCs, and Sprint that DSMI did not engage in "state action" that could be deemed unconstitutional, because Beehive does not have a property interest in the disconnected numbers and DSMI is a private corporation. DSMI Reply at 12-13; Sprint Comments at 3; BOC Comments at 6.

⁹³ Commission rules governing retrieval of toll free numbers are found at 47 C.F.R. §§ 52.101-52.109. These rules, *inter alia*, prohibit RespOrgs from warehousing toll free numbers. See 47 C.F.R. §§ 52.105, 52.109. Although Beehive seeks the return of the particular numbers it was previously assigned, the rules governing toll free number administration require that unused numbers go into a common pool for reservation by any RespOrg on a first-come, first-served basis. See 47 C.F.R. §§ 52.101 *et seq.*