

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

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

ORDER ON RECONSIDERATION

Adopted: December 18, 2007

Released: December 21, 2007

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, we deny a number of outstanding petitions for reconsideration of Commission orders concerning the toll-free administration system and the Commission’s toll-free rules.1 Specifically, we find that the issues related to the rollout of the 888 service access code (SAC) are moot, and we reaffirm our rules with respect to brokering, hoarding, and warehousing toll-free numbers.2 We also find that the current first-come, first-served method of allocating toll-free numbers is a fair, orderly, and efficient means for releasing toll-free codes. Finally, we reaffirm that Database Service Management, Inc. (DSMI) is a neutral administrator of the Service Management System (SMS)/800 Database.

II. BACKGROUND

A. The Toll-Free Number Administration System

2. Under the current toll-free number administration system,3 all toll-free numbers in the North American Numbering Plan, along with electronic records for those numbers, are contained in a centralized database, the SMS/800 Database. Access to the database is offered collectively by the Bell Operating Companies (BOCs) through the SMS/800 Tariff.4 Representatives from the BOCs collectively comprise the SMS Management Team (SMT), which is responsible for managing all aspects of SMS/800 services,5 and daily operation of the SMS/800 Database is performed by DSMI. As the business

1 The petitioners are listed in the Appendix.

2 47 C.F.R. §§ 52.105, 52.107.

3 A detailed discussion of the toll-free administration system is provided in the Fifth Report and Order. See Toll-Free Service Access Codes, Fifth Report and Order, CC Docket No. 95-155, 15 FCC Rcd 11939, 11942-11944, paras. 3-9 (2000) (Fifth Report and Order).

4 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.” SMS/800 Functions Tariff F.C.C. No. 1 at 47.

5 See Fifth Report and Order, 15 FCC Rcd at 11941, para. 3.

representative of the BOCs, DSMI collects payments on behalf of the BOCs for access to the SMS/800 Database, maintains financial records, and exercises general oversight of the SMS/800 Database.⁶ DSMI also certifies the Responsible Organizations (RespOrgs), which are permitted to access the SMS/800 Database.⁷

3. Subscribers seeking to obtain a toll-free number must contact a RespOrg.⁸ The RespOrg then obtains the toll-free number from the SMS/800 Database and manages the record for the number, including billing and routing information, as well as information about the subscriber's interexchange carrier. Subscribers may obtain a specific toll-free number, if it is available.

B. The Toll-Free Rules

4. The Commission promulgated the toll-free rules to promote the orderly, equitable and efficient use of toll-free numbers.⁹ Specifically, the toll-free rules prohibit subscribers from obtaining more toll-free numbers than they intend to use for toll-free service.¹⁰ Section 52.107(a)(2) of the Commission's rules prohibits "brokering," which is the selling of a toll-free number by a private entity for a fee.¹¹ This rule also provides that a rebuttable presumption of hoarding by a subscriber exists if multiple numbers are routed to the same subscriber.¹² Similarly, the toll-free rules prohibit RespOrgs from reserving toll-free numbers without having identified subscribers for those numbers.¹³ The rules also provide that a rebuttable presumption of warehousing by a RespOrg exists if a RespOrg does not have an identified toll-free subscriber agreeing to be billed for each toll-free number requested.¹⁴

5. The toll-free rules establish lag times, a reservation cap and a first-come, first-served toll-free number allocation process. The rule regarding lag times specifies the time that toll-free numbers may remain in a specific status, such as "disconnect."¹⁵ For example, if a RespOrg decides to place a

⁶ *See id.*

⁷ 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*, Order, 8 FCC Rcd 1423, 1428, para. 41 (1993) (*Tariff and RespOrg Certification Order*). The Commission reasoned that providing users with the widest possible choice of RespOrgs would serve the public interest because it would help subscribers to meet their individual needs and likely reduce the cost of RespOrg services. *Id.*

⁸ *See Fifth Report and Order*, 15 FCC Rcd at 11941, para. 3. Once the toll-free number has been assigned to a particular subscriber, that subscriber may port its toll-free number to another RespOrg by requesting its current RespOrg to make the change or by having the new RespOrg ask the SMS/800 Help Desk to port the number by submitting a written subscriber authorization. *See Provision of Access for 800 Service*, Order, 8 FCC Rcd 1844, 1845, paras. 9-10 (1993).

⁹ *See* 47 C.F.R. §§ 52.103 *et. seq.*; *see generally Toll-Free Service Access Codes*, Second Report and Order, 12 FCC Rcd 11162 (1997) (*Second Report and Order*); *Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9060, para. 5 (1998) (*Fourth Report and Order*).

¹⁰ 47 C.F.R. § 52.107(a).

¹¹ 47 C.F.R. § 52.107(a)(2).

¹² 47 C.F.R. §52.107(a)(3); *see also Second Report and Order*, 12 FCC Rcd at 11190, para. 40.

¹³ 47 C.F.R. § 52.105.

¹⁴ 47 C.F.R. § 52.105(b)(1), (2).

¹⁵ 47 C.F.R. § 52.103; *see also Second Report and Order*, 12 FCC Rcd at 11191-99, paras. 43-55. The statuses are assigned, disconnect, reserved, spare, suspend, unavailable, and working.

subscriber's toll-free number in "suspend" status because of a billing dispute, that number may remain in that status for a maximum of eight months.¹⁶ The reservation cap limits the amount of a RespOrg's toll-free numbers that may be reserved at a given time.¹⁷ The first-come, first-served requirement specifies that all toll-free numbers shall be available on a first-come, first-served basis, unless the Commission directs otherwise.¹⁸

III. DISCUSSION

6. Sixteen parties filed petitions for reconsideration of prior orders in the *Toll-Free Service Access Codes* docket concerning the toll-free policies, rules and administration.¹⁹ In this Order on Reconsideration, we address these petitions.

7. *Rollout of the 888 SAC.* Two parties jointly filed a petition for reconsideration (GT&S Petition) of the *Bureau Report and Order*.²⁰ In the GT&S Petition, the parties argue that the Bureau, in deciding to release the 888 SAC, failed to consider alternative means for addressing the shortage of toll-free numbers, such as ways to prevent hoarding and that the Bureau wrongly utilized the SNAC's "early reservation" plan for the 888 SAC.²¹ We find that the issues related to the release of the 888 SAC are moot. SNAC's early reservation plan was used only for the release of certain numbers in the 888 SAC and, thus, is no longer part of the process for releasing SACs.²²

8. *Efficient allocation and use of toll-free numbers.* Nine parties filed petitions for reconsideration of the Commission's *Second Report and Order* raising, among other things, modification of the Commission's brokering, hoarding, and warehousing rules and issues of implementation.²³ Specifically, certain petitioners argue that transactions involving the selling of toll-free numbers for a fee benefit the public by enhancing the value of telecommunications services and increasing efficiency.²⁴

¹⁶ 47 C.F.R. § 52.103(e). The lag time rule allows toll-free numbers to be placed in "reserve" status for a maximum period of 45 days. *See* 47 C.F.R. § 52.103(b).

¹⁷ *See* 47 C.F.R. § 52.109; *see also Second Report and Order*, 12 FCC Rcd at 11210-11211, paras. 76-80. The cap is the greater of 2000 toll-free numbers or 7.5 percent of a RespOrg's toll-free numbers that are in working status. 47 C.F.R. § 52.109(a).

¹⁸ 47 C.F.R. § 52.111.

¹⁹ *See* Appendix.

²⁰ GT&S Petition at 1. *See also Toll-Free Service Access Codes*, Report and Order, 11 FCC Rcd 2496 (1996) (*Bureau Report and Order*) (addressing the issues crucial to the March 1, 1996 release of toll-free numbers in the 888 SAC). For example, the Bureau adopted the Service Management System/800 Number Administration Committee's (SNAC's) early reservation plan to allow RespOrgs to determine if their commercial subscribers of 800 numbers wanted to set aside 888 numbers that had the equivalent seven-digit number. *Id.* at 2504. The Bureau retained the first-come, first-served policy for the remaining 888 numbers that 800 subscribers had not requested to set aside, which were subject to a conservation plan set forth in that Order. *See id.* at 2501, paras. 22-23, and 2505, paras. 39-40.

²¹ GT&S Petition at 10-12, 15-17.

²² As discussed below, the Commission adopted a first-come, first-served allocation system for the remainder of toll-free numbers in the 888 SAC and toll-free numbers in all subsequent SACs. Additionally, the Commission promulgated toll-free rules in the *Second Report and Order* to address the shortage of toll-free numbers. *See generally Second Report and Order*.

²³ *See* Appendix.

²⁴ *See, e.g.,* ICB Petition at 2-6; National Association of Telecommunications End-Users (NATE) Petition at 2.

Other petitioners argue that the Commission's rules regarding hoarding and warehousing are vague and overreaching.²⁵ We decline to modify our rules regarding warehousing, brokering, hoarding or the methods of implementation set forth in the *Second Report and Order*. In the *Second Report and Order*, the Commission held that hoarding and number brokering are contrary to the public interest,²⁶ and warehousing is an unreasonable practice under section 201(b) of the Act and inconsistent with the Commission's obligation under section 251(e)(1) to "ensure that numbers are made available on an equitable basis."²⁷ We find that these public interest concerns still exist and these practices would hasten the depletion of a particular SAC.

9. *First-come, first-served method of allocating toll-free numbers.* A number of parties seek reconsideration of the *Fourth Report and Order*, in which the Commission determined that vanity numbers in SACs opened after the 888 SAC would be available on a first-come, first-served basis.²⁸ Petitioners argue that the Commission should reinstate the SNAC's right of first refusal early reservation plan because the first-come, first-served reservation policy harms investment made by incumbent subscribers and creates confusion for consumers, and that trademark law may insufficiently protect incumbent subscribers; and further, distributing those numbers using the right of first refusal procedures would be no less efficient than first-come, first served allocation.²⁹

10. We decline to modify the first-come, first-served reservation process for newly released SACs at this time. Although we understand the incumbent subscribers' investment concerns, we continue to find that the first-come, first-served process will be more beneficial than a right of first refusal. Unlike the first-come, first-served method for allocating toll-free numbers, a right of first refusal policy still raises concerns about efficiency and unreasonable discrimination because incumbent subscribers would have the incentive to hoard the same seven-digit number in newly released SACs in order to keep potential subscribers/competitors at bay.³⁰ In addition, as more SACs are released, consumer confusion will decrease as consumers learn that not all toll-free numbers with the same last seven digits belong to the same person or entity.³¹

11. *DSMI as neutral administrator of the Service Management System (SMS)/800 Database.* Other petitioners seek reconsideration of the Commission's decision in the *Fifth Report and Order* that DSMI is a neutral SMS/800 Database Administrator.³² We decline to alter that finding. As the

²⁵ See, e.g., Mark D. Olsen & Associates, Inc. (MDOA) Petition at 2-4; Sprint Petition at 1-3; TLDP Petition at 4-7.

²⁶ *Second Report and Order*, 12 FCC Rcd at 11179, para. 22.

²⁷ See *id.* at 11189, para 38.

²⁸ See, e.g., Joint Petition of the DMA and ACRA at 3-11 (arguing that the Commission's rejection of right of refusal proposals when it adopted first-come, first-served, was arbitrary and capricious and harmful to subscribers with similar 800/888 numbers); Vanity International Petition at 5 (opposing the proposed auction of 888 toll-free numbers); USSBA Petition II at 3-10; see also *Fourth Report and Order*.

²⁹ See, e.g., Coalition Petition at 2-6. WorldCom argues, in particular, that the Commission should allow vanity numbers as well as vanity access numbers such as 1-877-COLLECT or 1-877-CALL-ATT to be released based on a right of first refusal; WorldCom 877 Petition at 1-9 (arguing that the first-come, first-served reservation policy fails to promote orderly, efficient, and fair allocation).

³⁰ See *Fourth Report and Order*, 13 FCC Rcd at 9068-9069, para. 23.

³¹ See *id.*

³² See, e.g., Beehive Petition at 13 (arguing that the SMS/800 Tariff does not ensure the neutrality of DSMI); WorldCom Petition at 4-5 (arguing that DSMI is not impartial because it derives a majority of its income from the BOCs).

Commission previously found, although DSMI is the business representative for the BOCs, the SMS/800 Tariff and the Commission's rules help ensure that DSMI performs its activities as overseer of the day-to-day management of the SMS/800 system in a fair and equitable manner.³³ The Commission reasoned that, under the SMS/800 Tariff, DSMI does not determine which RespOrgs access which toll-free numbers. Rather, RespOrgs retrieve toll-free numbers themselves.³⁴ We find that petitioners provide no new information to warrant a change in the Commission's prior conclusion. We do not find persuasive Beehive's argument that "unlawful discrimination by DSMI proves that the SMS/800 Tariff does not help to ensure DSMI's neutrality"³⁵ because there has been no finding by the Commission of such unlawful discrimination. We note that the SMS/800 Tariff provides RespOrgs with a basis for filing a complaint against DSMI if they believe that unlawful discrimination is taking place. We, therefore, deny these petitions for reconsideration and reaffirm the decision in the *Fifth Report and Order*.

12. *Definition of vanity numbers.* The National Association of Telecommunications End-Users (NATE) requests modification of the vanity number definition, alleging that the existing classification of vanity numbers only includes alphabetical numbers.³⁶ We decline to modify the definition, which provides that vanity numbers include any number that spells a word or phrase of value to the subscriber and any number in which the subscriber has a particular interest, economic, commercial or otherwise.³⁷ We find that this broad definition adequately encompasses any toll-free number in which a subscriber has a particular interest, including non-alphabetical toll-free numbers that are easily recognizable.

13. *Other Issues.* With respect to the remaining issues raised in the petitions for reconsideration, we reconfirm the Commission's treatment of those issues in the Commission's prior decisions.³⁸ The standard for a petition for reconsideration is provided in section 1.106 of the Commission's rules.³⁹ As the Commission has explained, "reconsideration is appropriate 'where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until

³³ See *Fifth Report and Order*, 15 FCC Rcd at 11946-11949, paras. 17-25.

³⁴ *Id.* at 11948-49, paras. 24-25.

³⁵ See Beehive Petition at 13.

³⁶ NATE Petition at 3.

³⁷ See *Fourth Report and Order*, 13 FCC Rcd at 9059, para. 1, citing *Toll Free Service Access Codes*, Notice of Proposed Rulemaking, CC Docket No. 95-155, 10 FCC Rcd 13692, 13701-02, para. 35 (1995) (*Toll-Free Notice*).

³⁸ See, e.g., Beehive Telephone Company, Inc. Petition at 23-25 (seeking reconsideration of the Commission's holding regarding cost allocation for toll-free numbering administration); Joint Petition of the Direct Marketing Association and the American Car Rental Association at 11-13 (requesting consideration of remedies for hoarding, warehousing, or attempted brokering of toll-free vanity or branded numbers); ICB Petition at 8-11 (seeking consideration of competitive concerns between carrier and non-carrier RespOrgs with respect to access to toll-free numbers); Mark D. Olson & Associates, Inc. Petition at 1-2, 4-9 (requesting consideration that RespOrgs may not disconnect a suspected hoarder without an order from the Commission and that toll-free subscribers be considered the same as telecommunications end-users under the Act); Sprint Petition at 4-6 (seeking clarification of processes and DSMI's involvement with recapture and reservations of toll-free numbers); TLDP Petition at 8-9 (seeking clarification of hoarding rule as it applies to resellers); Toll Free Referrals Co. Petition at 1-3 and Tellnet Communications, Inc. Petition at 1-3 (requesting consideration of specific issues regarding telemarketing service bureaus); U.S. Small Business Administration Dec. 17, 1997 Petition at 3-13; May 4, 1998 Petition at 3-21 (raising issues regarding the adequacy of the Commission's explanation of the first-come, first-served allocation process and its consideration of trademark law; seeking reconsideration of the Commission's analysis under the Regulatory Flexibility Act); WorldCom Petition at 2 (requesting the consideration of a North American Numbering Council recommendation for a transition plan of toll-free administration to a third-party administrator).

³⁹ 47 C.F.R. § 1.106.

after the petitioner's last opportunity to present such matters.⁴⁰ The Commission will not reconsider arguments that have already been considered.⁴¹ We find that these petitions have not cited material errors or presented new facts "not known or not existing" during the pendency of the relevant proceeding. Therefore, we deny the petitions.

IV. ORDERING CLAUSES

14. IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 201-205, 218, and 251(e)(1) of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 218 and 251(e)(1), this Order on Reconsideration IS ADOPTED.

15. IT IS FURTHER ORDERED pursuant to the authority contained in sections 1, 4(i), 201-205, 218, and 251(e)(1) of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 218 and 251(e)(1), the petition for reconsideration and/or clarification jointly filed by Genesis Two and Stop 888 Coalition on April 1, 1996 IS DISMISSED to the extent discussed herein.

16. IT IS FURTHER ORDERED pursuant to the authority contained in sections 1, 4(i), 201-205, 218, and 251(e)(1) of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 218 and 251(e)(1), the petitions for reconsideration and/or clarification filed by National Association of Telecommunications End-Users on May 23, 1997; Mark D. Olson & Associates, Inc. on May 5, 1997; Sprint Communications Company on May 27, 1997; ICB, Inc. on May 27, 1997; Toll-free Referrals, Inc. on May 27, 1997; Tellnet Communications, Inc. on May 21, 1997; Vanity International on May 30, 1997; TLDP Communications, Inc. on May 27, 1997; TDLP Communications Inc. on June 26, 1998; U.S. Small Business Administration on December 17, 1997; Toll Free Users' Coalition on May 1, 1998; MCI Telecommunications Corporation on May 5, 1998; U.S. Small Business Administration on May 6, 1998; Direct Marketing Association and the American Car Rental Association on May 4, 1998; Beehive Telephone Company, Inc. on August 9, 2000; and WorldCom, Inc. on August 4, 2000 ARE DENIED to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁰ *800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services*, Order on Reconsideration, 12 FCC Rcd 5188, 5202 n.84 (1997) (quoting *D.W.S., Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 2933, para. 4 (1996)).

⁴¹ 47 C.F.R. § 1.106(b)(3).

APPENDIX

This is a complete list of the petitions for reconsideration and clarification filed pursuant to CC Docket No. 95-155.

Bureau Report and Order:

Genesis Two, Inc. (Robert Tate, President) and Stop 888 Coalition (GT&S Petition). Filed April 1, 1996.

Second Report and Order:

1. National Association of Telecommunications End-Users (NATE Petition), filed by Mark Olson, Attorney & Executive Officer, NATE. (Emergency Petition Requesting Stay of Enforcement). Filed May 23, 1997.
2. Mark D. Olson & Associates, Inc. (MDOA Petition). Filed May 6, 1997.
3. Sprint Communications Company (Sprint Petition). Filed May 28, 1997.
4. ICB, Inc. (ICB). Filed May 27, 1997.
5. Toll-free Referrals, Inc. (TFR Petition). Filed May 27, 1997.
6. Tellnet Communications, Inc. (Tellnet Petition). Filed May 21, 1997.
7. Vanity International Petition for Stay and Reconsideration (Vanity International Petition). Filed May 30, 1997.
8. TLDP Communications, Inc. (TLDP Petition). Filed May 27, 1997. TDLP also filed a Supplemental Petition on June 26, 1998.
9. U.S. Small Business Administration (USSBA Petition) (Revised). Filed December 17, 1997.

Fourth Report and Order:

1. Toll Free Users' Coalition (Coalition Petition). Filed May 1, 1998.
2. MCI Telecommunications Corporation (now Verizon) (WorldCom 877 Petition). Filed May 5, 1998.
3. Office of Advocacy, U.S. Small Business Administration (USSBA Petition II). Filed May 6, 1998.
4. Joint Petition for Reconsideration, filed jointly by the Direct Marketing Association and the American Car Rental Association (DMA Petition). Filed May 4, 1998.

Fifth Report and Order:

1. Petition for Reconsideration filed by Beehive (Beehive Petition). Filed August 9, 2000.
2. Petition for Reconsideration filed by WorldCom, Inc. (WorldCom Petition). Filed August 4, 2000.