

**DISSENTING STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers*, WC Docket No. 07-271, CC Docket No. 95-155

This matter involves a discrete question: Should the Commission put itself in the position of deciding who permanently controls three toll-free suicide prevention hotline numbers? At the outset, I note that both parties involved in this matter, the federal government and a non-profit organization, have laudable interests in assisting individuals during extraordinarily difficult times in their lives and should be commended for their dedication.

Pursuant to the Communications Act, the Commission has exclusive jurisdiction over the assignment of toll-free numbers and usually assigns them on a first-come, first-served basis. And, while it is true that the Commission has the authority to deviate from this general practice to promote safety of life and property, previously the Commission has only once formally assigned a toll-free number.¹ In this matter, the Wireline Competition Bureau reassigned these numbers because there was a public health risk that phone calls to these hotline numbers may not be answered due to the financial condition of the non-profit. It should be noted, however, that the reassignment was issued on a temporary basis. In the meantime, the temporary reassignment had been extended several times to refresh the record and, in part, to re-analyze the non-profit's financial ability to maintain the three hotlines.

As a general principle, the Commission should not be in the business of picking winners and losers regarding the control of toll-free numbers and certainly should not get in the habit of analyzing entities' financial health in order to determine who should control a toll-free number. We certainly should not engage in such action without first establishing a regulatory framework through a rulemaking with an opportunity for public notice and comment. Without such a structure to discipline our decisions, we run the risk of acting in an arbitrary and capricious manner on a going forward basis. How will we handle disputes over number assignments in the future?

In the case at hand, several areas of disagreement remain. For instance, the parties disagree as to how much money the non-profit should have on hand in order to resume the management of the numbers.² Additionally, the parties disagree as to what rates are available for management of the numbers which ultimately would have a direct impact on how long the cash reserve would last (assuming no additional funds are raised through fundraising). Nonetheless, even given these disputes, the non-profit has committed to permanently release any claims to these numbers in the unlikely event that it runs into financial trouble again. Furthermore, although the original reassignment of the numbers served the interest of public safety, the reassignment was supposed to have been temporary, not permanent. Therefore, for all of these reasons, I disagree with the majority that the Commission should permanently reassign these numbers, and I respectfully dissent.

¹ *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 21 FCC Rcd 9925, 9927, para.5 (Wireline Comp. Bur. 2006) (*Red Cross Permanent Reassignment Order*).

² The non-profit has indicated that it has saved \$240,000 in cash reserves and continues fundraising efforts for these numbers.