

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

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COMMENTS OF U S WEST COMMUNICATIONS, INC.

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## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	ii
I. INTRODUCTION.....	1
II. THE EFFICIENT USE OF TOLL FREE NUMBERS.....	3
III. LAG TIME BETWEEN TOLL FREE NUMBER STATUS CHANGES.....	6
IV. PERSONAL IDENTIFICATION NUMBERS .....	9
V. MECHANICS OF OPENING NEW TOLL FREE CODE.....	11
A. Reservation on a First-Come, First-Served Basis.....	11
B. Phased Introduction of New Toll Free Access Codes .....	12
C. Implementation Plan for the Next Toll Free Code Beyond 888 .....	15
D. Tracking Toll Free Number Usage .....	16
VI. WAREHOUSING OF TOLL FREE NUMBERS .....	17
VII. VANITY NUMBERS .....	18
A. Right of First Refusal .....	18
B. Assignment of 888 Toll Free Numbers Based on SIC Code.....	24
C. Identifying High Traffic Numbers Would Require SMS/800 System Changes.....	25
VIII. ADMINISTRATION OF THE SMS/800 SYSTEM.....	27
IX. CIRCUIT BREAKER MODEL.....	28
X. TARIFFS.....	30
XI. CONCLUSION .....	32

## SUMMARY

Since its inception, the growth of toll free service has been shaped by market forces and competition. Number portability provided by the RBOC-provisioned<sup>1</sup> SMS/800 system added additional competitive flexibility. Market forces should continue to be the long-term driver behind the continued development and expansion of toll free services. Imposing overly burdensome and excessive regulation on the toll free market will only hamper its future growth. The Commission should instead focus on ways to ensure the fair and continued development of this high demand telecommunications service. Short-term guidelines can assist in the orderly implementation and rollout of the new 888 toll free code. The use and duration of such guidelines should focus on creating competitive neutrality while not impeding the development of the toll free market.

U S WEST addresses several of the Commission's concerns and proposals in its Comments. U S WEST would support the implementation of an affirmative response requirement prior to toll free number reservation in the SMS/800 system. This requirement will eliminate the largest source of inefficient number hoarding or "warehousing." U S WEST would not recommend shortening the lag times between number status changes and would instead refer those issues to the industry for review as necessary. The use of PINs should be encouraged, but not separately rewarded. The Commission should let the market provide incentive for PINs where

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<sup>1</sup> All acronyms are fully explained in the text.

appropriate. A phased-in approach for the next toll free code introduction would be appropriate and would ensure adequate system response during the initial offering. U S WEST opposes the duplication of vanity numbers in the 888 and future toll free codes. Such duplication will significantly reduce an already scarce resource. Additionally, such duplication may cause additional public confusion by creating the impression that all 800 numbers have a corresponding 888 number. U S WEST would instead propose that the Commission protect the mnemonic created by a given number for end users with such concerns. And finally, while U S WEST supports moving the operation and administration of the SMS/800 system to a third party, the Commission should open a separate docket to reconsider its earlier decisions in CC Docket Nos. 86-10 and 93-129 to make this significant change.

It is important that the Commission not overreact to the current situation surrounding the exhaust of the 800 toll free code. A small amount of regulatory focus and a few simple guidelines will be sufficient to avoid future administrative issues. The Commission should take this opportunity to demonstrate that the toll free marketplace with competition enhancing number portability does not require arduous regulation.

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Toll Free Service Access Codes )

**COMMENTS OF U S WEST COMMUNICATIONS, INC.**

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking,<sup>1</sup> hereby files its comments in the above-captioned proceeding.

I. INTRODUCTION

The use and demand for 800 service has been shaped significantly by market forces and competition since the inception of number portability in 1993. Market forces should continue to be the long-term driver behind the continued development and expansion of toll free services. The Commission should avoid imposing overly burdensome and excessive regulation on the toll free market and instead focus on ways to ensure the fair and continued expansion of this highly successful telecommunications service. While some short-term guidelines may assist in the

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<sup>1</sup> In the Matter of Toll Free Service Access Codes, CC Docket No. 95-155, Notice of Proposed Rulemaking, FCC 95-419, rel. Oct. 5, 1995 ("NPRM").

orderly implementation and rollout of the new 888 toll free code, the guidelines' use and duration should focus on creating a level playing field while not impeding the natural development of the toll free marketplace.

Starting in 1985, the seven Regional Bell Operating Companies ("RBOC") began the development of what is now the Service Management System ("SMS") and the associated SMS/800 database. In 1989, the Commission concluded that SMS/800 access is a Title II service and required the seven RBOCs to jointly provide 800 numbers in a portable environment under tariff.<sup>2</sup> A joint tariff was filed for provision of SMS/800 database service.<sup>3</sup> The RBOCs created a management oversight group made up of one representative from each company, with each representative on the SMS/800 Management Team ("SMT") having one vote representing their one-seventh ownership interest. The RBOCs, through the SMT, selected Bell Communications Research, Inc. ("Bellcore") to administer the system. Bellcore created Database Services Management, Inc. ("DSMI") as a subsidiary responsible for SMS/800 administration. DSMI in turn subcontracted management of the Number Administration and Service Center ("NASC") to Lockheed IMS. Computer hardware is provided under contract from Southwestern Bell. Final responsibility and ownership for all operation, management, and administration of the SMS/800 system, however, ultimately resides with the RBOCs.

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<sup>2</sup> See In the Matter of Provision of Access for 800 Service, Report and Order, 4 FCC Rcd. 2824 (1989) ("800 Order").

<sup>3</sup> See The Bell Operating Companies' Tariff for the 800 Service Management System, Tariff F.C.C. No. 1, Transmittal No. 1 (issued March 5, 1993).

The Commission, in seeking comment on whether an entity other than DSMI or a neutral third party should administer the SMS/800 database or perform functions currently performed by DSMI and Lockheed, misses the mark; DSMI is simply an agent for the RBOCs. The salient question is whether the RBOCs should retain administration and ownership of the SMS/800 database. If the Commission desires to address the reconsideration of its Order in CC Docket Nos. 86-10 and 93-129, it must do so in a separate rulemaking. Future decisions affecting the development and growth of the SMS/800 system should be based primarily on customer needs. The Commission should choose to let market forces continue to be the humus upon which the fruit of future toll free service is produced.

## II. THE EFFICIENT USE OF TOLL FREE NUMBERS

Inefficient use of a limited resource does not promote beneficial development in the marketplace. Toll free numbers represent such a limited resource. To the extent that toll free numbers are being hoarded or “warehoused,” that use, in reality that lack of use, removes otherwise productive potential from proper deployment of this resource. The Commission has proposed several methods to ensure that such inefficient use does not occur with regard to toll free numbers.

U S WEST supports the Commission’s proposed requirement that a Responsible Organization (“RespOrg”) or 800 service provider have a written affirmative request from a subscriber before the assignment or reservation of a toll

free number occurs.<sup>4</sup> U S WEST also supports a two-year retention period of the documentation associated with these affirmative requests. An affirmative request requirement for toll free number assignment would in some ways be similar to the affirmative request requirement for subscriber Primary Interexchange Carrier (“PIC”) changes.<sup>5</sup> This methodology ensures simple and effective compliance with the public interest goals associated with efficient use of toll free numbers. The Commission should establish rules requiring affirmative requests. While such rules would hopefully be sufficient to discourage fictitious assignments, the Commission could additionally use its audit authority to ensure compliance, as necessary.<sup>6</sup>

U S WEST would be opposed to a proposal to use an escrow requirement for the reservation of toll free numbers. An escrow process would require the collection, management, and fiduciary responsibility associated with the payment of customer deposits. No such capabilities currently exist with regard to 800 services. Such a proposal may also have a competitively negative impact on smaller providers and none of the desired impact on larger ones. The additional accounting requirements associated with an escrow solution would also increase the administrative overheads associated with providing 800 service. This cost would undoubtedly find its way to 800/888 customers, potentially inhibiting the demand for toll free service.

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<sup>4</sup> NPRM ¶ 13.

<sup>5</sup> See In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers, CC Docket No. 94-129, Report and Order, 10 FCC Rcd. 9560, 9564-65 ¶ 10 (1995).

<sup>6</sup> See 47 USC § 220(c).

Less intrusive and less market impacting methods exist for assuring the efficient use of this resource. The Commission should focus on those methods instead of imposing an escrow requirement on toll free number reservation. The Commission should select the methods that best balance the goals of resource preservation and limited market impact.

Pricing constraints are also responsible for the current inefficient use of toll free numbers. U S WEST and other access providers are currently unable to price toll free service based upon market conditions. Pricing is an effective mechanism for managing the demand, and thus the supply, of a limited resource. Toll free access pricing should be restructured to require that RespOrgs pay either a per-record charge or a storage charge for each record that resides in a provider company's Service Control Point ("SCP"). If RespOrgs are required to pay such a charge, there would be less incentive for a RespOrg to provide a toll free number to subscribers who either do not intend to use such numbers or who use them infrequently. One option would be a charge based on the size of the record housed in the SCP. A second option would be to establish a charge that was the same for all records but was sufficiently high to discourage assignment of toll free numbers to low-use or no-use subscribers.

Today, record sizes may range from less than 100 bytes to almost 100,000 bytes. There is typically not a direct correlation between the record size and the number of queries generated by a specific record. A charge to RespOrgs based on the total number of bytes of SCP memory capacity each RespOrg's records consume

would place the costs for SCP capacity use on the cost causer and would bear a rational relationship to the charge for SCP capacity use. This type of charge would lead to greater efficiency in building records and thus decrease the need for expanding SCP storage capacity. It could also help the local exchange carriers (“LEC”) reduce implementation time frames for future codes if hardware upgrades are not required as often to respond to number growth. Alternatively, a charge which is the same for each record would spread the cost of SCP capacity use across all records, but may be more effective at discouraging assignment and maintenance of low-use accounts and warehousing of numbers than a charge based on record size.

As the number of records stored in a SCP grows, SCP capacity must be expanded to continue to house additional records. Recovering the cost of SCP capacity use through queries will be increasingly difficult as more and more numbers are assigned to low-use subscribers such as paging clients and residential users. The Commission should allow pricing flexibility that would discourage inefficient assignment of this limited resource. A monthly charge for each record stored in a company’s database would be an effective means of promoting efficient allocation of toll free numbers.

### III. LAG TIME BETWEEN TOLL FREE NUMBER STATUS CHANGES

Due to the impending exhaust of the 800 service access code, the Commission implemented conservation measures to ensure the continued availability of toll free

numbers until the new 888 code becomes available.<sup>7</sup> These measures included an allocation plan and a shortened lag time between inactive and active or “working” number status. The Commission has requested comment on whether a shortened lag time would be appropriate going forward.<sup>8</sup> Specifically, the Commission has proposed several approaches: 1) reducing the interval between reservation and working status from 60 days to 45 or 30 days; 2) reducing the time a number can be assigned but not working from 12 months to 4 months; 3) reducing the disconnect aging period from 6 months to 4 months; and 4) reducing the time a number can be suspended from 12 months to 4 months.<sup>9</sup>

While these measures were appropriate during a time of conservation and transition, U S WEST believes that these shortened lag times should not become part of normal procedures. Nor should the Commission be involved at this level of detail and operational decision-making. Lag times have been established based upon significant prior experience with such number aging issues. Reduced lag times in a normal period may actually cause more problems than they might otherwise solve. Returning a number too quickly from disconnect aging status may actually increase the numbers in disconnect status. This occurs as a result of a customer receiving an excess number of prior-party calls on an insufficiently aged

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<sup>7</sup> See Letters from Kathleen M.H. Wallman, Common Carrier Bureau, to Mr. Michael Wade, Database Service Management, Inc., dated June 13, June 21, and Aug. 17, 1995.

<sup>8</sup> NPRM ¶¶ 17-19.

<sup>9</sup> Id.

number and requesting an additional number change to correct the situation. This would immediately place the previously assigned number back into disconnect status for an additional 4 months.

The disconnect status should allow an adequate time for prior-party calls to diminish. It should also allow time for new directories to be published and old directories replaced. U S WEST believes that a 6 to 12 month, as necessary, may be a more appropriate and prudent interval for aging disconnects to prevent end-user customer difficulties and dissatisfaction. Industry fora should make the final determination as to the criteria used. Even in the short time since the conservation measures concerning disconnect aging were implemented, U S WEST is experiencing a dramatic increase in customer complaints and more requests to change numbers due to the high volume of wrong-party calls associated with insufficiently aged 800 numbers. Should additional conservation be necessary in the future, the Commission could then re-impose the shortened time frames.

Reducing the interval between reservation and working status may cause problems for orders that take more than 30 or 45 days to complete. A significant number of orders bundle multiple services together, thus increasing the orders' complexity and the time required to complete service delivery. And many orders require significant coordination with other carriers. A permanent reduction in the reservation to working status may again have undesirable consequences.

The reduction in the time a number can be suspended from 12 months to 4 months will also not gain a significant savings in numbers. There are only

approximately 1,000 of these numbers in the system today. These suspended numbers also include numbers used for seasonal businesses, some of which have a very high volume of calls during the period in which they are active. Many have had a considerable amount of short-term advertising on the number, e.g., Christmas catalogs, ski resorts, telethons, etc. It would be better to have an appropriate pricing structure and to be able to tag these numbers uniquely for potential customers.

Overall, experience is a better indicator of the appropriate aging intervals, and industry fora are the places where such aging strategies should be discussed and developed. Comparatively, number aging and reassignment are not great contributors to number exhaust. Abuse of the reservation process and number warehousing without customers are significantly more injurious to the overall public interest goal of the efficient use of toll free resources.

#### IV. PERSONAL IDENTIFICATION NUMBERS

The Commission has requested comment on the use of Personal Identification Numbers (“PIN”) in association with toll free numbers.<sup>10</sup> As noted by the Commission, the use of PINs can increase the number of subscribers assigned to one toll free number. The Commission requests comment on the feasibility of plans to facilitate, encourage, and reward the use of a PIN system for at least some services, such as personal toll free service or paging services or other low-usage subscribers.

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<sup>10</sup> Id. ¶¶ 20-21.

U S WEST does not support the use of artificial encouragement by the Commission for companies that employ PIN technology. Again, the market and pricing of toll free numbers and services should drive the appropriate behavior. If a toll free service provider wants to offer a PIN-based service, thus limiting the end-user customers' ability to switch their numbers to another carrier, for a price that is presumably lower than normal toll free service, then that provider has already received the benefit of the PIN technology. For other users who want or need full portability, paying a presumably higher price provides additional flexibility. If the market is allowed to work undisturbed, then, as the use of toll free numbers increases and the cost of increased system capabilities to meet the need is reflected in toll free number assignment and call processing rates, the use of PIN technology will become increasingly more cost efficient and more providers will offer such service to appropriate subscribers. No additional incentive is required or necessary. Building in artificial stimuli at this point in the development of this market will only serve to inhibit its natural growth and development. Further monitoring and study should be undertaken prior to the Commission taking action which would manipulate normal market functioning.

To the extent that the Commission intended that comments be made on the possibility of the SMS/800 system being modified for the use of PIN technology, U S WEST believes that such modifications may be possible but are not currently supported by the system. The SMS/800 system was not originally conceived or designed with the use of PINs in mind. Such a system change would require

significant modification and industry agreement regarding the application of such capability. While such capability in the SMS/800 system would increase the number of customers able to use toll free numbers, it would also increase the cost of processing toll free number transactions. The modification cost necessary to implement such capability would have to be passed through, and per-transaction processing times would increase due to the additional PIN verification and translation. PIN systems implemented by the service provider would not require such SMS/800 system changes.

## V. MECHANICS OF OPENING NEW TOLL FREE CODE

### A. Reservation on a First-Come, First-Served Basis

The current practice of reservation of toll free numbers on a first-come, first-served basis will not be a significant issue if the Commission moves to require an affirmative signed request prior to number assignment. No other changes to the reservation rules would then be required. The current primary abuse of the reservation system, the requesting of large blocks of numbers to be reserved without associated customers, would effectively be mooted. Should the Commission suspect abuse of the reservation process, it could use its audit powers to investigate and penalize the offending parties.

The Commission has questioned whether the use of mechanized systems provide larger RespOrgs with a competitive advantage over other SMS/800 system

users.<sup>11</sup> U S WEST believes that the use of mechanized systems to make number reservations provides important efficiency gains. Under the normal reservation scenario, no advantage for a mechanized user exists in the scenario where the RespOrg has a customer and reserves a number for that customer via the mechanized interface. Both dial-up customers and mechanized interface customers can submit transactions to the SMS/800. Problems occur when the mechanized interface uses computer program logic to generate large volumes of transactions that are delivered to the SMS/800 which do not represent actual orders in their own systems. Actually, this concern is not restricted solely to mechanized interface users. Any dial-up user that uses a personal computer to issue transactions can generate the same type of high-volume transactions. Because of this, the Commission should not look at the mechanized interface users as the sole cause of mass transaction generation; instead, the Commission needs to look at mass transactions that do not reflect actual customer orders.

B. Phased Introduction of New Toll Free Access Codes

U S WEST agrees that a phased introduction of new toll free access codes needs to be implemented. Such a phased introduction will allow orderly processing and implementation of the new access codes without the fear of large-scale transaction processing overloading the SMS/800 system. Such a phased approach will also allow the Commission to monitor the implementation process and make

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<sup>11</sup> Id. ¶ 23.

adjustments as necessary. For the most part, such procedures for initial introduction and planning for future similar events should be recommended by industry fora which focus on such technical issues. This is particularly true for the trigger event for the next toll free access code introduction. Setting a specific measurement in advance, e.g., a specific percentage of utilization, without analysis of the depletion rate at the time of measurement could lead to implementation which is either too early or too late. Neither result would be optimal and could lead to additional conservation measures being required or inefficient pre-deployment of system resources.

From the perspective of the SMS/800 system, implementation of a process or procedure to limit the initial impact of the opening of the toll free access code is essential to the smooth operation of the system. The SMS/800 system currently has more than sufficient resources to handle the normal daily transaction and record downloading requirements. Assuming continued, but normal, growth in the demand for SMS/800 system resources, a system upgrade would not be necessary until 1997. However, with the potential massive initial demand on system resources to accommodate introduction of 888 numbering sources, SMS/800 system performance may be seriously impacted if some limitations on utilization are not in place when the numbering resource becomes available.

The current SMS/800 system capabilities are limited by the speed of the data flow over the links between the SMS/800 and the SCPs. The SMS/800 system, as configured in early 1996, is anticipated to have the resources to download

approximately 100,000 records per day, assuming the records are approximately the same size and complexity as the current typical SMS/800 record. In this time frame, if the demand for system resources exceeds those available, the response times associated with typical SMS/800 functions will increase. If the demand significantly exceeds the available system resources, performance can be expected to deteriorate to the point where interconnected systems will begin to experience time-outs and failures.

It should also be understood that the potential exists, even in today's environment, for system performance to be impacted by the scheduling of massive numbers of customer records to be downloaded to the SCPs during the same time period. The allocation systems in place within the SMS/800 today control the quantity of numbers a RespOrg can move from "spare" status to "reserved" status. The system does not currently limit the quantity of customer records that can be scheduled for download during a given period. A similar concern also arises when the users of the SMS/800, as part of a network architecture change within the service provider's network, attempt to update all, or a large portion, of their existing customer base.

If the Commission's expectation is that the restrictions should be enforced by the SMS/800 system, current system capabilities must be taken into account. The SMS/800 system currently has the capability to limit the quantity of numbers that can be transferred from spare status to reserved status within a given time period. The limitation can be implemented either on a system-wide basis or based on an

allocation for each individual RespOrg entity code. (An “entity code” is defined as the unique two letter combination that forms the first two characters of any RespOrg identification code.) The SMS/800 can also limit the specific 800-NXX and 888-NXX codes available for assignment within the system. With these capabilities, the SMS/800 can manage number reservations in several ways: 1) a limit can be put in place on a RespOrg entity-by-entity basis over whatever time frame the Commission requests allowing the RespOrg to reserve up to its allocation anytime within the given time period; 2) a system-wide limit of numbers available for reservation can be put in place over a given time period with numbering resources made available on a first-come, first-served basis; and 3) only selected 888-NXX codes could be opened for assignment within a specified time period, thus limiting the quantity of resources made available at any one time.

Some process or procedure for limiting the demand for SMS/800 system resources to the level of 100,000 record downloads per day is essential. Without such a limitation, the processing of new 888 numbering resources may be impacted, along with all other SMS/800-related activities, including the maintenance of existing 800 service customer records.

C. Implementation Plan for the Next Toll Free Code Beyond 888

As noted above, setting future implementation dates based on today’s analysis of toll free number utilization may produce unintended results. While no one wants to repeat the measures which were necessary due to the exhaust of the

800 access code, better tracking and industry planning could avoid a similar occurrence. The setting of an arbitrary date, such as February 1997, for all switch upgrades in the United States to be completed, will not lead to the most optimum deployment of resources. Companies need to have the ability to negotiate and choose the best available technology when implementation needs arise. The setting of an arbitrary date today might preclude U S WEST from taking advantage of better, less expensive technology which may be available at a later date sufficient to allow for optimum deployment of future codes. Market forces must be the yardstick by which the timing of upgrades is measured.

D. Tracking Toll Free Number Usage

U S WEST supports the Commission's initiative to continue to monitor and potentially audit the utilization of toll free numbers. U S WEST is willing to have DSMI provide the Commission with quarterly reports on: 1) the quantity of numbers that are in spare status and available for use; 2) the quantity of numbers in working status; 3) the quantity of numbers assigned to the various categories, as set forth in the Industry Guidelines; and 4) the estimated time remaining before that code is exhausted (this estimate would be based solely on dividing the remaining available numbers by the previous week's utilization).

The additional information referred to by the Commission, i.e., monthly usage and/or usage by type of toll free number, such as business, personal or access, is not information that is stored in the SMS/800 system. Each individual RespOrg

should be required to submit that data directly to the Commission. The Commission could then use this information to assess the current demand for toll free numbers and direct a faster response if necessary from the industry. This information would certainly give the Commission sufficient data to assess industry-developed planning and trigger dates for the next toll free code implementation. If adjustments became necessary, such proactive measures would be based upon actual data and implemented at an optimal time. The Commission would be able to fulfill its important role of ensuring the adequate availability of toll free resources to the public.

## VI. WAREHOUSING OF TOLL FREE NUMBERS

U S WEST supports the use of an affirmative signed customer request prior to reservation of toll free numbers in the system. This requirement would effectively prevent number warehousing. An additional cap on numbers in reserve status, based upon a RespOrg's total working numbers, would likely be unnecessary if the affirmative written request methodology was established and enforced. If the Commission still believed that some sort of cap should be imposed as a safety net, a cap which would provide an adequate, but not overly restrictive, control could then be imposed. A cap lower than 15 percent might prevent a small RespOrg from adequately meeting customer demand. A higher cap might provide individual RespOrgs reservation capability which could exceed system resources if these

RespOrgs were to reserve and put into working status a substantial amount of numbers in a short time frame.

The certification process to ensure compliance with the affirmative customer request requirement for RespOrgs should be done on a quarterly basis. This timing allows the Commission to maintain adequate supervision and control, yet does not overly burden RespOrgs by requiring them to submit monthly reports. If the Commission suspects that a RespOrg is not complying, it can always initiate a specifically targeted audit to ensure compliance with its rules. Should a RespOrg be found to be in violation of the Commission's rules, sanctions could include fines or the loss of RespOrg status for a given period of time. Loss of RespOrg status (i.e., the loss of the ability to accept new subscribers or make changes to records for its existing subscribers) would be a more potent deterrent. Large companies, and in some cases even small companies, are unfazed by a fine when the fine is small in proportion to the potential revenue gain.

## VII. VANITY NUMBERS

### A. Right of First Refusal

The Commission should not allow current 800 subscribers to duplicate their numbers in the new 888 toll free code. If number duplication is allowed, it will lead to the accelerated depletion of a limited resource. The growth of toll free numbers in the two years following number portability has approximated 112 percent of the total base prior to portability (3,091,710). Number use grew by 1.3 million in the

first year following the introduction of portability. The second year's growth was approximately 2.3 million. At this rate of growth, a code will exhaust in less than four years. If number duplication is allowed and current industry estimates of a two-million replication factor are accurate, exhaust of a new toll free code would occur in two-and-a-half years. The duplication factor is likely to grow exponentially with each successive code as new vanity numbers are created in one code and replicated in subsequent codes. Toll free numbers are too important a commodity to allow number duplication to deplete the resource with little or no value gained from the duplication.

Number duplication is likely to create greater confusion in the minds of the calling public. If 800 subscribers advertise that they may be reached by dialing either 800 or 888 NXX-XXXX, the public will assume that any 800 number may be reached by dialing the 888 equivalent. If unable to reach an 800 subscriber by dialing the intended 800 number, the caller will likely dial the 888 equivalent, expecting to reach that 800 subscriber. This will create a significant number of calls to the wrong subscriber who will incur the cost of such calls. If customers are educated at the outset that 888 numbers are not interchangeable with 800 numbers, confusion among the calling public will be eliminated.

Subscribers of 800 numbers are legitimately concerned with receiving and being charged for mis-dialed calls, the possibility of fraud, and loss of business from the misuse of toll free numbers. It will take some time for customers to assimilate the information regarding the 888 code. Duplication will add a layer of complexity

to the customer education process. A greater number of mis-dials are likely to occur if duplication is permitted for some numbers and not for others. If 888 duplicates of heavy volume 800 numbers are set aside and made unavailable for a period sufficient to allow for caller education, there should be much fewer mis-dialed or misdirected calls, and callers will more quickly learn that the 888 code is not interchangeable with 800 if the 888 duplicate number dialed is not a working number. The period of time for setting aside such numbers may be based on what is typical for customer education when area code splits occur (up to one year in some cases), or may be based on releasing those numbers when the 888 code is at a certain percentage fill (e.g., 75 percent).

Subscribers of 800 “vanity” numbers (i.e., numbers that spell the subscriber’s name or identify the business, etc.) are concerned that a competitor will obtain the matching 888 number. The competitor may then use the duplicate mnemonic representation of the number for fraudulent purposes, misrepresenting his/herself as the 800 number subscriber. These 800 subscribers fear that loss of business to the fraudulent competitor may result and potential loss of reputation or business goodwill may also occur. However, proper customer education that the 888 and 800 codes are not interchangeable will eliminate this problem.

A potential legal issue exists where 800 subscribers have a registered trademark or service mark in the mnemonic representation of the number, or the term has developed secondary meaning in the minds of the calling public/consumers. The question as to whether current subscribers have an

inalienable property right in the mnemonic representation is unsettled by the courts.

Naturally, customers who have spent a significant amount of money on advertising and/or have built their company's goodwill and reputation through the use of such numbers have a legitimate interest in protecting their investment. The possibility for allegations of infringement, unfair competition claims, and customer confusion is likely to be great if the replicated mnemonic representations of 800 numbers are utilized by ill-intentioned 888 subscribers. This problem will be eliminated if the Commission rules that 888 subscribers not be allowed to advertise mnemonic representations of 800 numbers currently in existence. This ruling should apply to all future toll free codes. Such a ruling would eliminate a potential rash of litigation on trademark/service mark infringement and protect the interests of current 800 subscribers. It would also remove the attractiveness of number brokering and the potential fraudulent use of matching mnemonic representations of 800 numbers already in use. Most importantly, it would reduce the incentive for 800 subscribers to foreclose the use by others of numbers already in short supply.

The protection of vanity numbers already in existence will require that a list of numbers be provided to the Commission and the list kept updated. Any current or potential subscriber to a toll free number will be required to determine whether a mnemonic representation is in use. If the mnemonic representation is on the list, then the same mnemonic cannot be used in the 888 code. While this forecloses the