COMMUNICATIONS VENTURE SERVICES, INC.

5526 Wisconsin Ave., P.O. Box 70805
Chevy Chase, MD. 20813-0805
(301) 215-1685

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Secretary,
Federal Communications Commission
Washington, D.C. 20554

Petition/Motion for Late Filing, if applicable, and
Comments on NPRM FCC 95-419, CC Docket 95-155
Toll Free Service Access Codes

Dear Commissioners, November 1, 1995

Communications Venture Services, Inc. ("CVS") hereby moves for the Commission to accept this filing as deposited into the U.S. Mail on November 1, 1995. The undersigned was unable to find the NPRM on the FCC Bulletin Board (BBS) and was advised by the Common Carrier Bureau on November 1, 1995 of a source on the Internet, from which the NPRM was retrieved today.

The NPRM was read in detail and the following comments were formulated, after prior thought on the issues and participation in the Commission's fora, and mailed before midnight on November 1, 1995. Therefore the Commission is requested to approve a possible technical "late filing." No other party is prejudiced.

Comments on the NPRM

The following comments are organized by the paragraph numbers of the NPRM:

7. The Commission should express the function of RespOrgs as the entity with a primary duty to the applicant-Subscriber.

9. The Commission implies that no new RespOrgs are being approved and that new RespOrgs may now be activated on December 12, 1995. Is this consistent with DMSI current practice?

13. Numbering resources should not be permitted to be assigned by a RespOrg without an written Order initiated by the Subscriber (terminating number subscriber other than the RespOrg's own entity or their own switches). Records should be kept for two years (codified in 47 CFR).

14. Any fees for "reserved" should be higher that those in "active" status. The Commission here has recognized the existence of "third party agents who obtain toll free numbers

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for distribution," but fails to state that the "distribution" should be limited to the agent's principal(s). We agree that "warehousing" is unfair and anticompetitive, but a definition of warehousing should be codified in the CFR. "Hoarding" and "warehousing" should be considered to be the same.

16. "Selling", "bartering", or "brokering" restrictions are practically unenforceable because the terms are not defined, and more importantly, if they were, the restrictions would prohibit the very actions RespOrgs (particularly those which are also carriers) engage in in the normal course of business. Thus, the Commission should simply codify the restriction in a way which requires that the entity to which a number is assigned must control all interconnection arrangements (including translations) related to that number in regulated network(s), and (possibly) further be the primary financially responsible party (i.e. customer-of-record) for all interconnection arrangements.

This simple codification should practically eliminate "selling", "bartering", and "brokering" because such an assignee could not effectively divest itself of financial responsibility (i.e. "flip" the number assignment to another entity) for the interconnection arrangements.

Such a codification would also facilitate and be consistent with the Commission's PIN method of shared use in Par. 20-21, where the assignee acts as a "PIN" activated switch.

18. We support the contraction of "reserved" status from 60 to 45 days, and "aging" from 12 months to 6 months.

20. PIN activated shared use is fully supported, provided that the number assignee be permitted to provide the PIN service (not just "carriers") to others with whom the assignee has a written presubscription agreement.

21. PIN service should not be limited to low volume uses or pagers, but should be encouraged for any presubscribed group in privity with the number assignee.

23. Reservation guidelines should be enforceable through economic incentives and disincentives and reclamation process. The reclamation authority should be codified.

The (8xx)-555-xxxx numbers should be treated as essential compliments to the issued 555 Line Numbers issued by NANPA on or after July 8, 1994 (555 Assignment Guidelines release date). Thus, assignees of 555 line numbers should have right-of-first-refusal for the identical (8xx)-555-xxxx number. That (8xx) number is essential to effectively and efficiently activate and use the associated 555 line numbers from areas where seven digit 555 access services are yet implemented. For example should a car rental agency such as AVIS use 555-AVIS in its national

advertising, then it is clearly necessary that the associated (8xx)-555-AVIS telephone number must be available from LEC areas where the seven digit 555 access or exchange service are yet to be activated or implemented. (There are pending complaint(s) to FCC and proceedings relating to the recent alleged warehousing of (800) 555-xxxx numbers on December 15, 1994).

24. The (888) numbers should be released incrementally, with (888)-000-xxxx to (888)-099-xxxx released on the first day, and (888)-100-xxxx thru (888)-199-xxxx released on the second day, and so forth.

27. The oversight of implementation should be delegated to the new NANC.

32. The Commission should confirm that warehousing of numbers by communications service providers subject to Title II *has always been* an unreasonable and presumed anti-competitive practice. This conclusion should be applied to pending complaint(s) regarding the massive warehousing of (800) 555-xxxx numbers which allegedly occurred on December 15, 1994. (Allegedly 8,000 of the 10,000 available numbers were reserved by one RespOrg subject to Title II in less than the first half hour after the database opened the morning of 12/14/94, where the RespOrg allegedly the assigned almost all of the numbers to itself despite external customer orders from Subscriber(s)).

33. Remedy should include disgorgement of the number assignments or reservation(s), and required assignment to the Subscriber(s) who made simultaneous or subsequent request for the same number(s), such as the remedy needed in the (800) 555-xxxx situation described above.

34. We agree that RespOrgs should be required to keep written records as proposed, and that the record keeping requirements should be codified in the CFR. "Working" status should exclude simple termination at a carrier's switch or offices without a specific Subscriber, unless actual call volume is shown (not simply an intercept recording). Warehousing of numbers by entities not regulated under Title II should not be a problem if the number assignee is charged a monthly fee, is the primary financially responsible party, there is traffic on the number, and the assignee remains in control of all interconnection arrangements and translations.

35. Vanity numbers should not include numbers which only spell word(s) which appear in the dictionary. A vanity number should include numbers which spell a previously registered independent trade name (as opposed to a registered trademark of a phone number mnemonic only, such as 800-FLOWERS, where the trademark for the word "FLOWERS" alone would not have been granted). An example of a vanity number would be 800-555-AVIS for AVIS rent-a-car, where "AVIS" does not appear in the dictionary and AVIS alone is a trademarked name independently. (See: Dranoff-

Perlstein Assoc. vs. Sklar, 967 F.2d 852 (3rd Cir. 1992); A.J. Canfield Co. vs. Honickman, 808 F.2d 305 (3rd Cir. 1986)(quoting S. Rep. No. 267, 98th Cong., 2nd Sess. 2, reprinted at 1984 U.S.C.C.A.N. 5719)). The current holder of 800-FLOWERS, for example, could obtain 888-356-9377 as soon as it is released by placing an Order for that number with all RespOrgs, and/or becoming its own RespOrg as well. Any RespOrg obtaining 888-356-9377 would rather have the "800-Flowers" company as a customer rather than some other speculator with small and unknown volume and/or intent.

We agree that vanity numbers should include numbers which *are necessary to the efficient and economic implementation of the underlying seven digit numbers*, such as 555-xxxx Line numbers and their associated identical (8xx)-555-xxxx numbers, and (8xx)-950-xxxx equal access codes.

36. There appears to be consensus that numbering resources (particularly those numbers which the public may dial), should be declared to be a public resource.[1] However, we cannot ignore the reality that numbering resources have always, and will always, have commercial value to an assignee. For example, the FCC itself has disregarded previous attempts to ignore the property right a number assignee has in a telephone number.[2]

We agree in concept with treating numbering resources as public property, but we cannot ignore the fact that numbers are memorable marketing tools for commerce. Since they are a finite resource, we all must assure that they are used in a way which does not impair the interconnecting networks and can be reclaimed under their assignment guidelines for misuse and extended non-use, without also impairing their efficient uses. We believe in a fundamental premise that numbering resources are efficiently used when the traffic through each number or code is maximized at each interconnection level.

The imposition of restrictions on number assignees which go beyond the retention of NANPA=s required span-of-control for the purposes of any possible NANPA number reclamation, or placing restrictions not technically necessary to implement the most rapid and efficient nationwide flexibility in network interconnections, might constitute unjust, unreasonable, and/or

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1 The FCC has exercised Plenary jurisdiction over numbering resources (Need to Promote Competition and Efficient Use for Radio Carrier Services, 2 FCC Recd 2910, 2912, par. 19 (1987)), but has recently clarified the FCC policy by generally retaining Access services (47 CFR 69.3(b))(i.e. nationally assigned exchanges such as 950 and 555, etc.) for exclusive federal jurisdiction, while others numbers/codes (i.e. non-access-related intrastate exchange codes) may be within the purview of the States, for the time being. (See: In The Matter of Proposed 708 Relief ...(Ameritech), Order FCC 95-19, 10 FCC Recd 4596 (1995)).

2 See: In Re Investigation of Access and Divestiture Related Tariffs, FCC 84-51, 97 F.C.C.2d 1082 (1984).

discriminatory practices and services. (See: 47 USC 151 & Secs 201(b) & 202(a) of the Federal Communications Act). Such a presumption is in the public interest. Such restrictions have been proposed at industry fora, thus indicating the need for codification of a public policy which encourages the maximum traffic over each numbering resource (such as shared use PIN).

37-39. The "public resource" policy should be codified for numbers which are dialed by the public, and left ambiguous for numbers and codes which are routing mechanisms internal to network(s) and generally "dialed" by computer(s) automatically. Such machine-to-machine codes can be expanded to include the tones "A", "B", "C", and "D", greatly expanding the available codes while increasing network security.

40. We agree with the holdings in: **Dranoff-Perlstein Assoc. vs. Sklar**, 967 F.2d 852 (3rd Cir. 1992); and **A.J. Canfield Co. vs. Honickman**, 808 F.2d 305 (3rd Cir. 1986)(quoting S. Rep. No. 267, 98th Cong., 2nd Sess. 2, reprinted at 1984 U.S.C.C.A.N. 5719)), as described above.

41-45. The Commission should define what the "same code" means as to SIC numbers. We suggest, that if this method of description is used, then the first two digits of the SIC should be sufficient.

55. We agree that high speed automated modem reservations by RespOrgs can be effectively limited by automatic circuit breakers, or simply rate of reservation limits per unit of time equivalent to sequential requests made at 9600 to 14,400 baud, a commonly available modem speed.

The commenter requests that the Commission hold a hearing on this NPRM in early December before final rulemaking.

November 1, 1995

COMMUNICATIONS VENTURE SERVICES, INC.

by _____
Richard C. Bartel, Its President