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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 20 1995

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

REPLY COMMENTS OF CABLE & WIRELESS, INC. DOCKET FILE COPY ORIGINAL

Cable & Wireless, Inc. ("CWI") respectfully submits its reply comments regarding the above-captioned Notice of Proposed Rulemaking. ("NPRM")¹ CWI urges the Commission to assure that any polices surrounding new toll free service access codes are consistent with the recommendations discussed herein.

I. INTRODUCTION

The record shows a mixed bag of support and opposition for the proposals put forth in the Commission's NPRM. Many commenting parties clearly opposed the following proposals on the grounds that they would be burdensome and impractical: PIN codes, escrow contributions, gateway intercept, partitioning of toll free codes. The record is less clear about other proposals. CWI limits its reply comments to the following issues: vanity numbers, requirements for affirmative requests and reporting requirements.

¹ In the Matter of Toll Free Access Codes, CC Docket No. 95-155, adopted October 4, 1995, released October 5, 1995, hereinafter ("NPRM").

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II. VANITY NUMBERS

In its comments, CWI stated that the Commission should not permit a right of first refusal because doing so could create a dangerous precedent which may embolden subscribers to request similar rights in other numbering contexts. That warning notwithstanding, CWI recommended that if the Commission does decide to permit number replication, it must do so for all 800 numbers. The Commission's definition of vanity numbers as presented in the NPRM includes all numbers of value to the subscriber. The Commission must be careful not to tailor this definition narrowly to include only those toll free codes which spell out a name or word. To do so would discriminate against a large block of users whose codes do not meet this criterion, but who value their codes nonetheless. CWI reiterates its recommendation that, if the Commission permit a right of first refusal, it extend this right to all 800 number holders.

A) Delayed Grant of Vanity Numbers

In the NPRM, the Commission asks for comment on, *inter alia*, whether vanity numbers in each toll free code should be deemed unassignable until a substantial percentage of the numbers in that code have been depleted.² A number of commenting parties supported some form of delayed grant of vanity numbers.³ CWI opposes a delayed grant of vanity numbers on the grounds that delaying the grant will only defer the possible misuse of vanity codes, not prevent it.⁴ Two reasons compel the Commission to attempt to create a policy to govern the distribution of vanity numbers. First, the Commission

² NPRM at para. 26.

³ See, for example, Southwestern Bell Telephone at 18, MCI at 15, Bell Atlantic at 9.

⁴ Bell Atlantic makes a similar arguments in its comments. See, Bell Atlantic at 9.

seeks to protect the substantial investment which businesses have made to associate their toll free codes with their businesses. Second, the Commission seeks to avoid the rapid depletion of new toll free codes. CWI asserts that delaying the assignment of vanity numbers would ameliorate neither concern.

In support of a delayed grant of vanity numbers, MCI states that the Commission needs this period of time to “resolve the issues associated with the protection of vanity numbers.”⁵ CWI believes that this period of time creates more problems than it solves. First, if all 800 subscribers were given the right to place their numbers in an “unavailable” status, very few 888 codes would be left for assignment.⁶ In this scenario, delayed grant of a vanity codes would lead to 888 depletion almost immediately.

Most parties recognize that some sort of pre-reservation of vanity numbers is necessary to prevent unnecessary depletion of 888 resources. Even with a limit placed on the quantity of numbers which can be designed “unavailable” however, delayed grant poses a problem: valuable numbering resources still lie fallow for an unspecified period of time. If toll free codes were plentiful enough to permit large quantities of the resource to lie unused, the instant proceeding would not have been commenced. Consequently, CWI opposes this delay, which it considers a waste of valuable resources.

Delaying the grant of vanity codes also opens the door for instances of warehousing and brokering. SWBT’s proposal for delayed grant of vanity codes entails a

⁵ MCI at 5.

⁶ Southwestern Bell Telephone Company (SWBT) makes a valid point in its comments. It states that the need to protect a customer’s value in an existing 800 number is based on an assumption that the public cannot differentiate between 1-800-THE-CARD and 1-888-THE CARD. If this is the case, says SWBT, then the public will not be able to differentiate between any 800 number and the associated 888 number. SWBT asks if it will be necessary, then, to duplicate not just vanity numbers but also easily recognizable numbers. SWBT points out that, if this were the case, the cost in toll free resources could be far greater than anyone anticipated. SWBT at 16.

requirement that the NASC be designated as the RespOrg of record for any vanity codes labeled as “unavailable.” This is necessary, says SWBT, to “prevent the original RespOrg from using this method to hold numbers for future use.”⁷ Apparently SWBT fears that RespOrgs will reserve 888 numbers regardless of whether the current 800 subscriber desires, and eventually use the unwanted numbers themselves. Delayed grant of vanity numbers would increase the likelihood that just this type of mischief would occur -- that carriers would “misappropriate” unavailable numbers for their own use. It is far neater and safer to assign numbers for immediate use to subscribers who desire them.

For these reasons, CWI opposes a delayed grant of vanity numbers. If subscribers are interested in obtaining the 888 equivalent of their vanity code, let them obtain it and put it to use. If the subscriber has no legitimate use for the extra code, then that code should be assigned to another user who will put the number to use.

B) Limited Right of First Refusal

In its comments, AT&T proposes that the Commission grant a right of first refusal for up to 15 percent of a RespOrg’s working 800 numbers.⁸ CWI cannot support AT&T’s version of the right of first refusal. While fifteen percent of AT&T’s working 800 numbers may be an adequate quantity to permit AT&T to replicate all of the numbers which its customers desire, it is not adequate for CWI or most likely any other small RespOrg to do the same. CWI and other small carriers do not have the large volume of active 800 numbers which AT&T possesses. Consequently, these small carriers would be

⁷ SWBT at 18.

⁸ AT&T at 24 - 26.

unfairly disadvantaged under AT&T's scheme. CWI does not oppose the Commission fixing a quantity of numbers which a RespOrg can reserve. In the interest of equity and non-discrimination, however, this fixed number cannot be based solely on market share.

III. AFFIRMATIVE REQUEST

The Commission also proposes that RespOrgs and 800 service providers be required to have an affirmative request from a subscriber in order to assign a toll free number to the subscriber. The Commission also asks whether RespOrgs and 800 service providers should be required to retain records of such affirmative requests for two years.

A number of commenting parties support the Commission's affirmative request proposal as a means to prevent RespOrgs from evading toll free number limits. CWI adds its voice to the chorus of support for this proposal as long as the Commission clarifies its intent to apply this requirement to assigned, not reserved numbers. As Ameritech notes in its comments, in some instances the Commission appears to contemplate requiring an affirmative request as a precondition for assigning a toll free number, whereas at other points it seems to contemplate an affirmative request requirement as a prerequisite for reserving a toll free number.⁹ CWI agrees with Ameritech that the latter proposal is *neither necessary nor desirable*. As long as RespOrgs cannot assign a number without an affirmative request, there is little reason to restrict the RespOrg from temporarily reserving a number for use in sales or marketing campaigns.

In its comments, MCI lobbies against an affirmative request requirement on the grounds that, since toll free services are often promoted to customers via telemarketing,

⁹ Ameritech at 5.

requiring a request from subscribers would impose a substantial burden on RespOrgs and toll free service providers.¹⁰ CWI believes this to be untrue. First, as stated above, CWI supports an affirmative request requirement for assignment, not reservation, of toll free codes. The “burdensome” nature of this requirement would be minimized by its association only with the actual *assignment* of a number. Second, CWI asserts that it would not necessarily be burdensome to incorporate an affirmative request requirement into the normal assignment process. The interexchange industry has successfully included the requirement to obtain a signed “letter of agency” (LOA) into its normal business practices. So could RespOrgs and toll free service providers. Given that an affirmative request fulfills an equally valid public interest concern as LOAs (protection against warehousing, etc.) the Commission should have no compunction in implementing such a requirement. In its comments, LDDS suggests that any verbal requests be followed up with a written report attesting to the verbal request within 60 days.¹¹ CWI supports this requirement as a non-burdensome means to accomplish the proposed affirmative request requirement.

CWI does not necessarily support the Commission’s proposed two-year retention period for records of affirmative requests, however. AT&T states that, although it obtains an affirmative request as a matter of practice, it does not retain a record of these requests. To be required to do so for a period of two year, it states, would be unduly burdensome.¹² CWI agrees that a two year retention period would be burdensome, and supports a lesser retention period of one year. Like LDDS, CWI feels that a one year record retention

¹⁰ MCI at 2.

¹¹ LDDS at 3.

¹² AT&T at 7.

requirement is adequate for the Commission to ensure compliance with its requirements without imposing an unnecessary burden on RespOrgs.¹³

IV. REPORTING REQUIREMENT

The record also indicates substantial support for the Commission's proposed reporting requirements. In the NPRM, the Commission proposes that the SMS/800 administrator be required to submit periodic reports to the Commission on toll free utilization, including the quantity of numbers in spare status and available for use, the quantity of working numbers, the quantity of numbers assigned to working status each month, the estimated time remaining until exhaust and the quantity of numbers assigned to each of the nine categories specified in the industry guidelines. The Commission also seeks comment on whether information on usage by type of toll free number assignment (i.e. business, personal or access) should also be reported.¹⁴

CWI supports the Commission's initiative to monitor the utilization of toll free numbers in order to ensure the efficient usage and timely deployment of future toll free codes. Like many other commenting parties, however, CWI urges the Commission to protect the proprietary customer information of RespOrgs. CWI recommends that all information be presented to the Commission in aggregate form. If the Commission requires more specific data, it can request such information from the RespOrg on a case-by-case basis.¹⁵ In regards to information by type of toll free assignment, CWI notes that,

¹³ LDDS at 3.

¹⁴ NPRM at para. 31.

¹⁵ CWI recognizes that the Communications Act empowers the Commission to request any information it desires from RespOrgs. Therefore, to minimize the reporting burden on RespOrgs and the

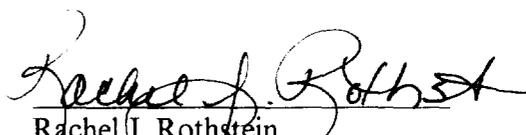
since this information is not already contained in the SMS/800 database, it would have to come from the individual RespOrg. Again, the Commission could request this information on an exceptional basis.

database administrator, CWI recommends that the Commission not require RespOrg-specific information in the reports it receives from the SMS/800 database administrator.

V. CONCLUSION

CWI believes that the record shows a mix of support and opposition for the proposals contained in the above referenced NPRM. To aid the Commission in its contemplation, CWI offers the following suggestions. CWI urges the Commission not to support a delayed grant of vanity numbers on the grounds that doing so would only defer, not solve, the problems associated with vanity numbers. CWI support the Commission's proposals of an affirmative request as a necessary pre-requisite for the assignment (not reservation) of a toll free codes, however it suggests that records of these requests be kept for only a period of one year. Finally, CWI supports the Commission's proposed reporting requirements, however joins its fellow commenting parties in urging the Commission to protect the proprietary information of RespOrgs.

Respectfully submitted,



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