

ORIGINAL

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

DOCKET FILE COPY ORIGINAL

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

REPLY COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.

RECEIVED
NOV 20 1995
FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE
SECRETARY

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby submits its Reply Comments in the above-captioned *Notice of Proposed Rulemaking*. MFS will use this opportunity to address the following issues raised in the comments of responding parties: (i) increasing efficiency in the toll free system; (ii) the mechanics of opening new toll free codes; (iii) the warehousing of toll free numbers; (iv) the use of vanity numbers; and (v) the administration of the SMS/800 database system.

I. INCREASING THE EFFICIENCY OF THE TOLL FREE SYSTEM

A. Affirmative Requests for Toll Free Numbers

The Commission has developed a number of proposals designed to increase the efficiency of the toll free number system. These include requiring a RespOrg or 800 service provider to have an affirmative request from a subscriber before assigning a toll free number to a subscriber. Numerous commenting parties responded favorably to this proposal. See, e.g. LDDS WorldCom ("LDDS") Comments at 3, Bell Atlantic Comments at 2, GTE Comments at 2, U S West Comments at 3, and AT&T Comments at 4. MFS fully supports the use of affirmative requests under the assumption that service providers will remain able to maintain a pool of reserved but

In the Matter of Toll Free Access Codes, CC Docket 95-155, Notice of Proposed Rulemaking, (FCC 95-419), released October 5, 1995 ("Notice").

No. of Copies rec'd
List ABCDE

049

inactive numbers (without an affirmative request) in the SMS database for exclusive use by their customers. MFS stresses that it cannot properly provide service to its customers without access to a quantity of reserved toll free numbers in the SMS/800 Database. This controlled pre-reservation of toll free numbers is an essential element of the toll free service provided by MFS and does not constitute warehousing. Ameritech, supporting this position, argued that maintaining a limited store of reserved numbers not linked to a specific customer "has no long term effect on the overall availability of toll free numbers" and facilitates the marketing of toll free service. *See Ameritech Comments at 27.*

B. Escrow Requirement

MFS does not support the Commission's proposed escrow requirement, which would be charged each time a number is reserved. Smaller service providers rarely maintain large pools of reserve numbers, and the imposition of an escrow fee would serve as yet another obstacle to their ability to effectively compete against larger competitors in the toll free market. As Southwestern Bell Telephone Company ("SWBT") argues, an escrow requirement would be "financially prohibitive to small RespOrgs and to small customers if flowed through them, but no problem at all to large RespOrgs. *See SWBT Comments at 4.* Moreover, as Bell Atlantic notes, such a requirement makes no distinction between those carriers that have abused the system and those who have played by the rules. *See Bell Atlantic Comments at 2.* Institution of an escrow requirement does not guarantee efficient allocation of numbering resources and is certain to negatively affect smaller carriers' ability to compete effectively in the toll free market. Such a requirement also will generate significant administrative and billing burdens.

If the Commission does impose an escrow requirement, MFS supports the adoption of a threshold approach that would insulate smaller service providers from anti-competitive effects. Alternatively, the level of the escrow requirement could be graduated by the size of the service provider.

C. Time Lag

MFS supports maintenance of the current time lag guidelines that are utilized in situations of normal (non-conservation) operation. Most commenting parties supported the position adopted by MFS and argued that current time lags should be maintained. *See, e.g.* Bell Atlantic Comments at 3, Southern New England Telephone ("SNET") Comments at 8, NYNEX Comments at 1-2, and U S West Comments at 6. MFS agrees that reductions in lag times, while necessary in situations of near-exhaustion, will be unnecessary and potentially harmful when appropriate rules are enacted in this proceeding. *See* LCI International, Inc. ("LCI") Comments at 5.

Of particular concern to MFS is the proposal to reduce the amount of time a toll free number can be held in reserved status. The current 60 day period ensures that RespOrgs have sufficient time to install necessary equipment for dedicated access customers. Compression of this time period would offer little tangible benefit while increasing the chance that customers would lose their reserved number, thereby eroding the customer's confidence in their chosen service provider. Ameritech noted that the proposed measures could inconvenience customers, complicate their business planning, and subject them to increased business costs. *See* Ameritech Comment at 10. LCI joined MFS, raising concerns that smaller service providers would be hurt by such a reduction. *See* LCI Comments at 6. If the 60 day reservation period is reduced, larger service

providers, with their greater resources, will be better able to adapt to a tighter time frame. Once again, smaller service providers will be weakened vis-a-vis their larger competitors.

D. Personal Identification Numbers

The Commenting parties were nearly uniform in their argument that the Commission refrain from mandating any use of PIN technology. *See, e.g.* Bell Atlantic Comments at 4, AT&T Comments at 11, and Sprint Comments at 6. MFS supports a deliberate approach to encourage the implementation of this technology. PIN technology offers a potentially limitless supply of toll free codes. However, the current state of PIN technology does not permit portability in the same manner as toll free numbers without PINs and it may be incompatible with some toll free services. Additionally, the use of PIN technology raises competitive concerns -- companies whose customers must dial a toll free number plus a PIN may be at a competitive disadvantage compared to companies whose customers must only dial a toll free number. MFS believes that the Commission should continue only to encourage the development of this technology and allow the marketplace to dictate its deployment.

II. MECHANICS OF OPENING NEW TOLL FREE CODES

A. Reservation of New Toll Free Codes

As a smaller carrier, MFS shares the concern expressed by the Commission over the continuing competitive difficulties experienced by smaller RespOrgs. One area of particular concern is the ability of several large RespOrgs to interface mechanically with the SMS/800 database. Larger RespOrgs interfacing mechanically with the SMS/800 database are able to reserve massive quantities of toll free numbers in rapid order. The current reservation system

enables a few large members of the industry to acquire the majority of strategic numbers while their competitors are left behind.

Many commenting parties urged the Commission to maintain the current reservation system as it is (first come, first served), noting that the current system is firmly grounded in established procedures that are inexpensive to administrate. MFS does not dispute the validity of these arguments, and believes that the current system can be maintained if it is modified to remove the competitive disadvantage faced by smaller competitors. One possible means of modifying the current reservation system was provided by SNET in its initial comments (p. 10) in this proceeding. Under the current SMS Guidelines, the reservation process should allow a RespOrg a minimum 60 seconds to access the system and reserve a desired number without interference from competing RespOrgs. However, with the advent of the MGI interface (which allows mechanized interface between the SMS/800 Database and a RespOrg), mass number reservations by larger RespOrgs jam the SMS system and erode the ability of smaller competitors to acquire numbers in the 60 second lock out period. Reinstatement of a truly effective 60 second lock out period, which functions even in the face of mass number reservations, would help to level the playing field.

A second potential solution is found in the application of circuit breaker technology. Circuit breaker technology is currently employed in the trading of securities and is designed to restrict program trading in volatile markets by restricting access to computerized trading systems. The Commission has proposed to utilize circuit breaker technology to control the day-to-day operations of the SMS/800 Database by limiting the daily consumption of toll free numbers by all

RespOrgs. MFS strongly supports this proposal, and believes that it would meet the Commission's goals by: (i) promoting the efficient use of toll free numbers; (ii) preventing warehousing; and (iii) preventing RespOrgs employing MGI technology from reserving unreasonably large blocks of numbers in rapid sequence. MFS agrees that tighter controls on the supply of toll free numbers and noted that circuit breaker technology would allow smaller RespOrgs to have a better chance of securing strategic toll free codes that are in high demand. *See* LDDS Comments at 7. The use of circuit breaker technology appears to be a practical solution for this problem, as it merely controls the use of MGI technology in certain high volume transactions rather than restricting it permanently or eliminating it outright. MFS recommends that the circuit breaker restraint be utilized **in addition** to the 60 second lockout discussed above.

III. WAREHOUSING OF TOLL FREE NUMBERS

In its efforts to prevent the warehousing of toll free numbers, the Commission has proposed the implementation of a permanent cap on the quantity of reserved numbers that can be withdrawn by a RespOrg at any one time. MFS does not favor a cap as low as the three percent conservation level. Under such a cap, requests by customers for new numbers "would be continually frustrated and delayed, and RespOrgs would experience costly administrative difficulties associated with ongoing rejection, delay and resubmission of customer requests." *See* AT&T Comments at 23. A cap at this level could limit the ability of new RespOrgs to maintain steady rates of growth. Indeed, a new RespOrg often experiences higher growth rates than its established competition, thereby requiring a greater pro-rata share of reserved toll free numbers

to meet customer demands. Setting a cap that is too low increases the risk for small companies and could result in their loss of significant business to larger competitors.

MFS does support the implementation of numeric caps to limit the ability of larger RespOrgs to withdraw massive quantities of toll free numbers over short periods of time. Ameritech suggests codification of the current industry guidelines, which cap reservations at 1000 numbers or 15 percent of a RespOrgs total quantity of working numbers, whichever is higher. *See Ameritech Comments at 27.* MFS supports this proposal, but believes that it can be improved by placing a firm, quantified upper limit on the amount of numbers that a RespOrg can reserve at any one time. As such, the Commission should place an upper limit on the 15 percent cap, thereby limiting the total quantity of numbers that can be reserved by any given company. Such a limit would prohibit a company from reserving a disproportionate share of toll free numbers, ensuring fair treatment of all companies regardless of size. *See Time Warner Comments at 6.*

IV. VANITY NUMBERS

Vanity numbers and the potential replication of such numbers in reserve toll free codes have engendered passionate disagreement among commenting parties. The resolution of this issue is of critical importance both to the industry and the wide variety of end users that employ toll free service. MFS believes that this proceeding, which has followed a compressed schedule, is not the proper venue in which to decide the complex issues surrounding the replication of vanity numbers. As a result, MFS urges the Commission to protect all vanity numbers subject to potential replication by holding them in an "unavailable" status for a certain period of time (a "set aside" period) after the opening of the new code. These protected numbers could then be assigned once

the issues surrounding their use are resolved. *See* MCI Comments at 15. In order to facilitate this, the Commission should define those numbers which are vanity numbers by asking RespOrgs, customers, and other carriers to identify: (i) the vanity number(s) to be set aside, and (ii) the basis upon which they are considered to be a vanity number.

A set aside period would allow time for careful consideration of the various issues by the Commission and industry members. Additionally, such a period would facilitate public education efforts, which could limit the need for a right of first refusal. *See* Sprint Comments at 19. To be truly effective, the set aside period would have to last for at least one year, or until the exhaustion of the 888 code is imminent. As end users become more familiar with the new 888 code, they will be less likely to make mistakes or dialing errors.

MFS is reluctant to support a right of first refusal for several reasons. First, such a policy is ill-advised given the magnitude of replication requests and the finite nature of toll free numbering resources. A high replication rate will hasten the exhaust of the 888 toll free code and any follow-on toll free code. This is contrary to the stated intent of the Commission to provide for the efficient deployment of these scarce resources. Second, toll free numbers that are replicated do little to stimulate the development of new services or create additional traffic volume. Finally, the precedent established by granting a right of first refusal in this case could be extended to other codes, such as the 500 code.

V. ADMINISTRATION OF THE SMS DATABASE

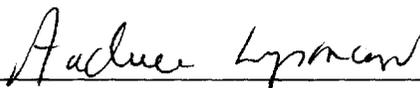
Many commenting parties urged the Commission to require that a neutral third party undertake the future management of the SMS/800 Database. *See, e.g.* Bell Atlantic Comments

at 10, BellSouth Comments at 13, AT&T Comments at 17, and Sprint Comments at 22. MFS supports these commenting parties and recommends that the SMS Database functions be performed by an independent third party. Although the RBOCs have expressed their intention to divest themselves of Bellcore, there appears to be no final plan for implementing this proposal. Therefore, it is prudent to delegate SMS Database responsibilities to the new North American Numbering Plan Administrator to be selected by the North American Numbering Council.

VI. CONCLUSION

MFS hereby submits these reply comments for consideration by the Commission in its toll free number proceeding. MFS commends the Commission for its leadership and looks forward to the timely resolution of these issues so that the industry can move ahead to the challenges of the future.

Respectfully submitted,



Andrew D. Lipman
Russell M. Blau
Dana Frix

SWIDLER & BERLIN, Chartered
3000 K Street, N.W.
Washington, D.C. 20007
(202) 424-7500

Attorneys for
MFS Communications Company, Inc.

Dated: November 20, 1995

149364.1