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November 15, 1995

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Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: *Toll Free Service Access Codes*
CC Docket No. 95-155; FCC 95-419

Attached are the Reply Comments of Dean Witter, Discover & Co. in the above rulemaking. Please contact me at (202) 326-3995 with any questions.

Sincerely,

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1300 I Street, NW 12th Floor Washington, D.C. 20005

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

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

**Reply Comments of Dean Witter, Discover & Co.**

Dean Witter, Discover & Co. submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above Docket, released on October 5, 1995.

*Interest of Dean Witter, Discover & Co.*

Dean Witter is one of America's leading providers of financial services, focusing on the needs of the individual investor and borrower. Our securities division, Dean Witter Reynolds, Inc., offers mutual funds and unit investment trusts and provides a full range of investment services through America's third largest network of account executives. One of Dean Witter's business units, Novus Services, Inc., provides credit card services nationwide, as the issuer of Discover Card (with more than 30 million accounts), Private Issue, Bravo and other brands. Other business units provide "private label" and MasterCard credit cards, and home mortgage loans.

In serving millions of consumers nationwide, Dean Witter relies extensively on toll free telephone services in all of its business units. Each day, hundreds of thousands of calls are received on toll free lines by our brokerage offices and customer service centers. We are, accordingly, vitally interested in proposals affecting the availability and cost of toll free service.

Toll free telephone numbers have become increasingly critical to the efficient provision of consumer financial services, and consumers have come to rely on them as the principal means of communicating with credit card issuers and other financial service providers. The following examples of separate toll free telephone numbers offered by Dean Witter illustrate the extent of toll free usage:

Discover Card:

- Information and applications for new accounts
- "Activation" of new and replacement credit cards mailed to Cardmembers
- Inquiries from Cardmembers about monthly account statements
- Incoming calls to collection personnel on past due accounts
- Calls from merchants requesting authorization of Discover Card transactions
- Calls from merchants seeking authorization of VISA and MasterCard transactions processed on Dean Witter's NOVUS network
- Merchant "Help Line"

Dean Witter Reynolds, Inc.:

- Separate toll free number for each of 350 retail brokerage offices
- Separate toll free number for mutual funds and unit investment trusts

- Customer inquiries, orders regarding "Active Assets Account" ("sweep account")

*Scope of Dean Witter Comments*

Dean Witter, Discover & Co. generally endorses the comments filed in this Docket (on November 1, 1995) by the "800 Users Coalition." Although, we are not a participant in that group, a number of its members are financial services providers with operations similar to our own, and the Coalition's comments address most of the issues that affect such operations.

Our comments focus on the proposals mentioned in the Commission's Rulemaking Notice affecting so-called vanity numbers. We are also a major user of other high volume toll free numbers, and believe that the protections that we urge the Commission to adopt for vanity numbers should be extended to high volume business numbers as well.

*"Vanity Numbers" -- Right of First Refusal (NPRM ¶ 42)*

Dean Witter uses vanity numbers such as 1-800-DISCOVER (which appears on every Discover Card) and 1-800-869-DEAN to provide ready access to customer service employees for our credit card holders and investors. These numbers are extensively promoted in new account advertising and are prominently displayed on millions of statements mailed each month to existing credit card holders and investors. Calls to vanity numbers represent the bulk of the calls received by Dean Witter's credit services businesses, accounting for as much as 80% of the total . We are concerned that proposals

which would provide other firms, whether or not they engage in competing lines of business, with access to 888 (or other) toll free numbers similar to our existing 800 numbers could have extremely detrimental effects on our businesses and customers, particularly in the early months following the introduction of a new toll free prefix. The dialing of 888 numbers by consumers intending to reach a familiar 800 number will inevitably occur, resulting in consumer confusion and ill will, and possibly a loss of investment opportunities or legal rights. For example, if a consumer who is trying to communicate a buy or sell order to a securities account executive reaches, instead, an unrelated number, the delay could result in loss of value in the consumer's investment. Credit card customers who experience difficulties in reaching customer service representatives to report lost or stolen cards, or to discuss errors or account delinquencies might fail to meet deadlines needed to avoid the imposition of additional finance charges and late fees, the filing of collection suits, delinquent account reporting to consumer credit bureaus or other action.

For these reasons, we believe that the right of first refusal approach would provide the best means for assuring the continuity that business users of vanity numbers, and their customers, require. We urge the Commission to adopt this approach for 888 and subsequent new toll free codes.

Providing a right of first refusal approach for vanity numbers is unlikely to have a significant impact on the overall availability of toll free numbers, since vanity numbers comprise a small percentage of the total universe of these numbers. (See, e.g., Comments of The 800 Users Coalition, which estimates that vanity numbers comprise approximately

5-6% of the total. While calls to vanity numbers represent a substantial percentage of our call volume, only about 4% of the toll free numbers used by Dean Witter, Discover & Co. are vanity numbers). Thus, even if vanity 800 number subscribers were automatically assigned corresponding 888 numbers, there would be more than an ample supply of numbers for other users.

We do not believe that there is a need to impose a fee on subscribers who avail themselves of a right of first refusal. The implementation of such a right would not appear to entail costs of any significance, and there is therefore no need to impose a fee to cover the actual costs of "reserving" an 888 number. However, it is not likely that there would be opposition from most users to a modest fee imposed in a cost-justified basis.

*Assignment by Competitive Bidding (NPRM ¶ 42)*

The proposal to assign numbers through a competitive bidding process, while perhaps motivated by considerations of fairness and the encouragement of open markets, would have undesirable consequences for holders of toll free numbers, and the consumers who have become accustomed to using the numbers. This is particularly true with regard to vanity numbers which are close to, or the same as, the subscriber's trade name or to a trade or service mark in which the owner has a considerable good will investment. Holders of such numbers should not be compelled to bid against others who have not made such an investment in order to prevent an exploitation of their trade name and

investment, and to guard against consumer confusion or even fraud that could occur when the unrelated party began using an equivalent number.[1] Thus, while we believe that the right of first refusal approach should be adopted for all vanity numbers, we suggest that at the very minimum this approach should apply to numbers which are based on a subscriber's trademark or trade name. This approach can be adopted without addressing the issue of whether the subscriber has an *ownership interest* in the toll free number. It would be based instead on the policy that in assigning the *use* of a number, a party with an established trademark, tradesman or service mark usage in the term spelled out by the vanity name should have a superior right to the use of the corresponding number. This approach will reduce consumer confusion as to the identity of the holder of the number and bring about a corresponding reduction in the number of misdialed calls.

*Assignment Based on Industrial Classification (NPRM ¶ 44)*

Assigning toll free numbers on the basis of SIC or other industrial classification codes should not be adopted. Large 800 service users will be harmed whenever a customer mistakenly dials the holder of an equivalent 888 number and reaches an unrelated party, *whether or not that party is a competitor*. Such calls will result in lost business, delays in customer access to the business they intended to call, the expenses of sorting out charges for miscalled calls, and potential abuses.

[1] The argument for a right of first refusal is less compelling with regard to vanity numbers that are based on words that are merely generic or descriptive, i.e., words that would not ordinarily be entitled to protection under trademark laws. However, under trademark laws, such words may be afforded limited protection from use by others, or they become available to any user. Exclusive rights to generic or "merely descriptive" terms are not awarded to challengers or competitive bidders.

The industrial classification approach is troublesome for other reasons. In the first place, this approach is based on the flawed assumption that subscribers which share the same classification are competitors, while subscribers with other industrial classifications are not, and consequently should be permitted to use equivalent toll free numbers. In reality, a firm's industrial classification may not indicate the different lines of business in which it competes. For example, similar financial services are frequently offered by firms which may not share common SIC or other classification codes (e.g., credit cards are offered by banks, diversified financial services firms, and commercial entities like telecommunications carriers, department stores and oil refiners).

The adoption, maintenance, and enforcement of a workable classification system for all users of toll free services would be an enormously complicated and expensive enterprise. Refining a classification system to accurately identify the lines of business in which a subscriber engaged would require time and expertise which would delay the implementation of such a system, and require constant attention as subscribers' operations changed. Mechanisms to verify applicants' claims regarding their classification would have to be developed and monitored (to prevent such abuses as "number brokers" obtaining the right to use an 888-equivalent number by claiming to be engaged in non-competing businesses).[2] Addressing these problems would divert Commission resources from the agency's statutory responsibilities.

[2] Ironically, while the proposal would prohibit a company from reserving an 888 equivalent of its own 800 number, it would appear to permit affiliates, subcontractors or other parties with different SIC codes to do so, thereby encouraging the use of such arrangements to keep equivalent numbers out of the hands of number brokers.

*Miscellaneous Proposals (NPRM ¶ 46)*

*a. Delayed Release* -- The proposal (to delay the release of 888 numbers which are equivalent to 800 vanity numbers until the end of the toll free assignment pool (i.e., until a substantial percentage of the 888 pool is depleted) could have unintended consequences. As consumers become accustomed to the new toll free codes, many may believe that they replace or supplement existing 800 numbers. We would therefore expect many consumers to begin using the new numbers immediately (intentionally or inadvertently) to reach the business they formerly called on 800 vanity numbers. However, if equivalent 888 numbers have not been made available (and if availability is delayed for months or years pending the depletion of other numbers in the pool), customers dialing inactive numbers will be confused, inconvenienced, and delayed in their efforts to reach the business they intended to call.

In addition, businesses developing television and radio advertising, direct mail campaigns and other communications may want to include new 888 equivalent numbers in such materials. If the new numbers are not made available until the 888 number pool is substantially depleted, businesses will not know whether, or when, they will be able to offer -- and advertise -- toll free service access on the new numbers.

Delaying the availability of the new (equivalent) numbers until other users have claimed a substantial percentage of the numbers in the pool could also create administrative problems. For example, in order to prevent the assignment of an equivalent number to a subscriber other than the 800 vanity user, a mechanism for identifying and reserving -- and releasing -- such numbers would need to be established,

although the numbers might not be released until years later. It might also be necessary to devise strategies for releasing the numbers in an orderly fashion to prevent service and other delays that might be experienced if all vanity users are required to delay applications for 888 numbers until the other numbers have been depleted.

Rather than delaying the assignment of 888 equivalent numbers until other 888 numbers have been substantially depleted, the Commission should consider strategies for simplifying vanity users' access to 888 numbers. The right of first refusal by 800 users could be presumed, and users given notice of their right to obtain equivalent 888 numbers. (This right could expire if not exercised in a specified time period.) Given the relatively small number of users who are currently vanity number users, this approach would protect the interests of existing users and their customers without depleting the supply of numbers available for other users.

*b. Intercept Messages* - The proposal to require carriers to provide "transitional gateway intercept" messages to callers of vanity numbers and their equivalents would address many concerns about misdialed calls and reduce billing errors. We would urge the Commission to implement a requirement that carriers offer this service to vanity and other high volume subscribers. To reduce call delays and the inconvenience of having to redial, the intercept message should permit callers to be automatically connected to the party they intended to reach .

The use of intercept messages may not be required for all numbers, particularly for those where callers are less likely to misdial the intended toll free number. For example, Dean Witter's Human Resources Department has established an 800 number which employees use to enroll and make changes in medical, insurance and other employee benefit plans. Since employees are sent personal written reminders about the use of this number the chances of misdialed calls are reduced, and the need for an intercept number may not be required. For that reason, intercept message service should be an option, not a requirement, for toll free lines.

*c. Partitioning* -- The partitioning of toll free service numbers would provide benefits to consumers and business users alike, and we strongly urge the Commission to adopt this approach. If 800 numbers were reserved for specified business users, while other codes were dedicated to other uses (facsimile, non-business personal, pager, etc.), all toll free service subscribers and callers would become accustomed to the different codes and their purposes. Recognition of the separate function which a code identifies, such as the high level of recognition which exists today with respect to the 800 and 900 codes, would reduce consumer confusion, misdialing and delays. It would enhance consumers' ability to remember, and their willingness to use, specific toll free numbers, and alleviate the 800-888 equivalent number problem.

Partitioning would not, however, eliminate misdialing of numbers. Thus, for example, even if a specific code were reserved for pagers, the holder of a pager number which was the equivalent of a vanity 800 number might still receive calls intended for the

800 subscriber. For that reason, there may be a need to adopt procedures (1) to insure that 800-equivalent numbers in partitioned categories were being used for their intended purpose, and (2) to block access to 800 vanity -equivalent numbers, even if such numbers are assigned to specific uses under a partitioning arrangement.

*"Lag Times" (NPRM ¶ 18)*

The Commission seeks comment on a proposal to reduce (to 4 months) the lag time between the assignment of a toll free number by a Resp Org, and the conversion of the number to working status. We urge the Commission, in addressing this question, to be mindful of lead times that affect the ability of business users to actually begin using a toll free number, particularly a vanity number that must first be brought to the attention of customers through direct mail, broadcast, "Yellow Pages" and other forms of advertising.

The current industry guidelines define an "assigned" number as one which has been assigned to a specific subscriber, but has not yet been activated, and a "working" number as one which is actually "being utilized to complete 800 service calls." A considerable period of time may elapse before an assigned number is actually put in use for legitimate business reasons that have nothing to do with hoarding numbers. Before a new toll free line can be put into "working" status, the business subscriber must often complete a large number of operational procedures which range from hiring and training a staff to answer the calls to promoting the availability of the new number to the public (a step which cannot begin until a number has been assigned). Once these steps have been taken, there may be further delays before the first calls come in. For example, when a

credit card issuer establishes a toll free number for new cardholders to use to "activate" their cards, the activation process will not begin until credit card solicitation materials have been disseminated, consumers respond to the offers, and the new cards are mailed out. A toll free number established to handle incoming calls from delinquent credit card accountholders will obviously not begin to be used until holders of a new card begin to use the card, fall behind on their payments, and begin to receive outbound collection calls. The delay in using such new 800 numbers may be many months, and sometimes as long as a year.

An unreasonably short period of time between a number's reservation and its conversion to working status will impose a hardship on businesses which have such lengthy lead times. A limitation on the time that an inactive number can be held could result in the loss of a number which the business had incurred significant sums to promote to the public. We urge the Commission to allow lag times which are reasonable in light of legitimate business needs. For example, the definition of "working" status could be expanded to include numbers for which a subscriber is paying a line charge, regardless of whether incoming calls are being made to the number. This change would allow subscribers to begin using a number after the necessary preliminaries have been completed, but would discourage hoarding by those with no present intention of actually using a number.

It should also be pointed out that there are sometimes legitimate business reasons for acquiring a numbers which are not intended to be actively used or are used only occasionally. This includes numbers which customers sometimes dial in error, such as

numbers that are no longer in use and numbers that are a digit or two removed from a well-known vanity number. Obtaining such numbers allows misdialed calls to be forwarded to the proper number, avoiding consumer inconvenience and delay and the charging of the call to an entity the consumer never intended to reach. Proposals to reduce hoarding of numbers should not penalize the holding of such numbers which are, in fact, "working" numbers.

*Conclusion*

The Commission's Notice raises important issues about toll free service numbers and availability which directly affect the ability of financial services providers to serve their customers. We strongly support the proposals to address the allocation of these numbers through partition and right of first refusal mechanisms, which provide the least disruptive and most equitable means of insuring the continued availability of toll free services.

Respectfully submitted,
Dean Witter, Discover & Co.

By _____
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Dated: November 15, 1995