

EX PARTE OR LATE FILED

Vanity International
Docket No. 95-155

Before the
Federal Communications Commission
Washington, DC

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JAN 19 1995

In the Matter of

Toll Free Service Access Code)

CC Docket No. 95-155 FCC MAIL ROOM

To: The Commission)

EX PARTE COMMENTS OF VANITY INTERNATIONAL

Loren C. Stocker, Managing Partner of Vanity International, hereby submits ex parte comments in conjunction with the Notice of Proposed Rule Making released in this proceeding on October 5, 1995. With respect thereto, the following is stated:

On behalf of my smaller clients, myself, and the unsuspecting public I request that the FCC require the industry to **IMMEDIATELY ABANDON** the planned January 24, 1996 pre-preservation launch of the 888 exchange. In conjunction, the SMS should be reopened for "protection requests" until such time that all existing 800 owners have had due notice and a fair and equitable opportunity to apply for "protection" of the 888 version of their 800 number(s) with their existing carrier; or sufficient time to switch service to a carrier willing do so on their behalf.

This action is vital and in the best interest of the FCC, the industry, and the public. If the planned January 24 launch is allowed to go forward a great injustice will befall much of the 800 community; they will have unknowingly forfeited their exercise of "right of first refusal." Further, the RespOrgs have collected "protection requests" in a way that clearly discriminates against small business. As of this moment, only the rich, the powerful, the well-connected, and the fortune few are pre-loading into the SMS and afforded "protection." The rest of the 800 community is about to be blinded-sided. This situation is in clear violation of the public trust, and just the kind of injustice that would make headlines and prove to be embarrassing to the FCC, should the FCC fail to take decisive action. A summary of our findings follows.

Background

First, let me make it clear that I recognize that the FCC has not yet ruled on replication. If replication is stuck down, then "protection requests," "right of first refusal," and the like are mute issues. There purpose of this request is avoid irreparable damage in the meantime.

My company is uniquely positioned to view the scope of this situation. We are both consultants to large, Fortune 500 companies and to small companies that subscribe to 800 service. Without exception, our large clients were personally approached by RespOrg

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sales reps under heavy deadlines. They were asked to provide a list of existing numbers to be "protected" as well as requests for new 888 numbers. We know this for a fact; we helped them with their selections. On the other hand, the smaller companies subscribing to 800 services with eight of the largest RespOrgs (6 LD's and 2 RBOCS) were approached by only one of the LD's and accidentally advised by another. When we reviewed correspondence from all eight RespOrgs since last November, there has been no apparent notification to the effect that 800 holders must act to "exercise their right of first refusal."

Situation

There is widespread public confusion as to the purpose of the recent data collection by some RespOrg personnel. This effort was thought to be a "survey," a "poll," or as a way to "get a feel" of what the demand was for replication. Much of the data was not entered. Several RespOrgs elected to not take requests towards the end of the allotted period. Others, choose not to participate at all. No problem, if this was just a "survey." You can extrapolate (I suggest a factor of 3-4). But, now I understand that this incomplete, unannounced, poorly collected data was, in fact, the real thing. It is being used as the sum total of "protection requests," for right of first refusal. This is serious. This is wrong. This must be stopped.

Most companies -- predominately smaller 800 users -- were never asked for their input. Or, submitted requests but were never keyed into the SMS reservation system. Requests submitted to AT&T during the last 30 days, for example, are "collecting dust on some desk." These requests were not keyed in to the SMS and are not in "protected" status. Other RespOrgs, like Frontier, refused to even take requests stating that, "the FCC hasn't ruled yet." Others like MCI took data, but forwarded it to their customer relations group; the same group that decides if your company is big or important enough to get an MCI 800 number in the first place. It right of first refusal, if granted, is not a right of the privileged few, but of all 800 holders..

Supporting Facts/Findings

The FCC's Goal: "In light of our goal to make allocation of toll free numbers a fair and equitable process..." (CC Docket No. 95-155). Any discrimination in the collection of "protection" data would fly in the face of this clearly stated objective.

The Set-up: The December 15, 1995 letter from Michael Wade (DSMI) to Kathy Levitz (FCC) stated, "The initial round of *protection requests* was due .. December 14, 1995" (emphasis added). It also stated, "The next round of data input is scheduled for January 5 -- 12, 1996." Our understanding is that these numbers -- and only these numbers -- are coded as "not available" for the general 888 release and early reservation process to begin January 24, 1996. On January 16, 1996 I confirmed that is, indeed, the situation awaiting an FCC order to proceed. Concurrently, FCC has either been closed or snowbound and no action has been taken on replication. It is essential to recognize that a rescheduled launch date alone will not change this.

The Deadline: The unsuspecting public expects that, given an affirmative FCC outcome, their right to replicate will be preserved. I could find no mention in the press that "protection requests" were fait accompli as of January 12, 1996. This deadline for "protection requests" was a backroom deal and published as an attachment to the "Comments of the SNAC/OBF." This key deadline was unannounced to the public nor generally understood by those directly affected, i.e. the 800 community at large.

The Launch: I could find no mention in recent articles of the January 24 pre-reservation launch date. The public is wholly unaware that the 888 version of their 800 number may be assigned to someone else just days from now. This pre-reservation mechanism would nullify their option to replicate, as the deadline for "protection requests" has passed. The January 24, 1996 launch date was also unannounced and is not generally known.

Who's First in Line?: The 888 request forms also contained requests for new, unreplicated 888 numbers. These requests may be filled by computer targeting during the first minutes of the January 24, 1996 launch (via the MGI) giving a competitive advantage to those who's requests for new numbers are keyed in. This is especially troubling where you consider that one RespOrg may be targeting an 888 number for which AT&T (or other RespOrg) has an un-keyed request form. Subsequently, there will be no way to compel the successful RespOrg or holder to turn it over. A class action may ensue.

Due Notice: The commission has characterized telephone numbers as a public resource that is not the property of the carriers (NANP Order, CC Docket No. 92-237, FCC 95-283). Yet, the RespOrgs were not required to participate (some did not) or even inform their subscribers of the consequences of their inaction. Is it not in the public interest to give 800 number "holders" due notice?

Right to Exercise: The question before the commission is "whether the current holders of 800 numbers should be permitted to exercise such a right of first refusal (888 replication, CC Docket No. 95-155)." There is no suggestion that the carriers have a right to decide this matter for them. Yet, by selectively collecting and submitting data RespOrgs may have sealed the faith of many of their subscribers. Is it not the right of the "holders" to make this determination?

Personal Effort: After learning of the deadline, I made a personal effort to submit replication requests with 6 (5 LD's and 1 RBOC) of the 8 RespOrgs prior to the January 12 cut-off. Only one had made unilateral contact with us, and that was just days before the deadline. From that effort, I discovered the following: Requests submitted to AT&T -- and any since December -- are being logged in order of receipt, but not keyed into the SMS. Another LD RespOrg, Frontier, had no mechanism in place to take requests and stated that, "the FCC hasn't ruled yet." MCI, Sprint, CWC took requests, but it's not clear if they were going to be keyed in before the deadline.

The RBOC had no mechanism and was of the understanding that the data gathering was just "for research."

Case of 1-800-Tickets: Two weeks ago, unaware of the January 12, 1996 deadline, Mr. Richard Zorn, President of 800-Tickets, Inc., called AT&T to inquire about the current status of 888 replication. He was told explicitly, "We are not taking any requests. If we did, they would just be collecting dust on someone's desk." On our advice, Mr. Zorn called AT&T once again during the week of January 8 and was further advised, "AT&T headquarters instructed us not to take any more forms, until further notice." Pressed further, however, the rep agreed to receive the form and subsequently forwarded it on to the 800 specialist in his Syracuse office.

On January 12, 1996 I personally confirmed that AT&T, indeed, had this policy in place. I further discovered that the receipt of these forms was "cut-off for a while, but now the forms were being logged in a pile by order of receipt;" a seemingly dead end. I specifically asked our AT&T contact if these requests were then being entered into the SMS database. He responded, "Not as far as I know." Further pressure by Mr. Zorn, incidentally, resulted in his 888 number being added to AT&T "protected" list as of today, January 18, 1996.

Discrimination by default

There should be no discrimination between large and small users. Period. All should be afforded due notice and equal access to "protection," if granted. Yet, the facts suggest that RespOrgs made only limited effort to secure "protection requests" in light of the pending FCC rule on Docket No. 95-155; a classic application of the 80/20 rule driven by simple economics. As a result, their large subscribers were easily targeted and "got the word," while others were either not solicited or not key-in upon submission (a la AT&T forms collection) when effort was suspended.

RespOrgs had incentives to get large users to sign their request forms, as these forms contained language that voided the replication requests should the user change RespOrgs. This language was necessary, of course, but had the clear benefit of locking in large customers for the duration of the ruling and launch. Economics supported this effort; it wasn't done just for the public good. This campaign began late last fall and was mostly completed by the December 14th deadline.

When it came to mid-size and smaller users, RespOrgs had less incentive to solicit requests and suspended most second-tier effort in December, pending FCC action. By default, smaller subscribers who failed to seek out "protection" during in the first wave -- the vast majority -- were neither notified to take action or directly surveyed by any sales reps due to their lack of account revenue. These 800 holders are about to be blind-sided.

Conclusion

The situation as it stands is unconscionable. If granted, it is the "holders" right to replicate their 888 numbers -- not the RespOrgs, Yet, the RespOrgs have preempted the rights of

small users by not taking action, or by failing to advise them of the consequences of their inaction. When it comes to replication, it should make no difference whether a request is the first or last collected; "protection" means priority over any and all reservation requests.

The public is mistakenly under the notion that if the FCC allows replication, then they will have time ample to submit a request *prior* to the reservations launch. They are wholly unaware that a backroom deal may have rendered this assumption invalid. All afforded "protection" is fait accompli, and most of it as of December 14, 1995.

Further, the rich, the powerful, the well-connected, and the fortune few who's requests were pre-loading into the SMS may also be first to get their pre-reservations filled by computer targeting during the first minutes of the January 24, 1996 launch, or on a rescheduled launch date (a la the MCI/555 technique). They would, thereby, become the assignees of 888 vanity numbers for which replication requests may either be "collecting dust" or were never solicited in the first place. A class action may ensue.

It is, therefore, not sufficient to simply delay the launch; SMS must be reopened for "protection request" to give everyone a fair and equitable opportunity to participate. The public should be well advise of the timeline in advance.

Remedies and Recommendations

- Suspend the January 24 launch at once. The FCC's extended furlough and winter weather is justification enough.
- Make a ruling on Docket No 95-155 first. The RespOrgs not have to expend further effort if this is all for naught.
- Immediately reopen "protection requests" to for all users to participate.
- Prohibit any discrimination on the basis of "account revenue."
- Require RespOrgs to inform all subscribers of deadline and the new launch date.
- Require RespOrgs to inform all subscribers of their replication policy. If the RespOrgs are not going to key-in their request, then their subscribers should be so informed. Rather than compel RespOrgs to participate, this requirement allows market forces to drive the decision to participate or not.
- Set deadlines to allow ample time for users to change to a *participating* carrier, if their present RespOrg is doing nothing.
- Allow enough time between the "protection" deadline and the new launch date for concerned users to confirm their listing on the SMS. This will ensure accuracy and minimize fraud and abuse.

In summary, we contend that it is not the privilege of the RespOrgs to decide whether or not to seek "protection," but, rather, the right of subscriber. Therefore, subscribers must be given due notice and adequate time to ensure their "protection requests" will be implemented by their existing RespOrgs; or adequate time to seek out a new carrier if the existing one is unwilling to do so. To rectify this situation, we ask that the FCC stop the deployment of 888 numbers at once and reopen submission of "protection requests."

WHEREFORE, it is respectfully requested that these comments be considered in this proceeding.

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Respectfully Submitted



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