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

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

REPORT AND ORDER

Adopted: January 25, 1996

Released: January 25, 1996

By the Chief, Common Carrier Bureau:

TABLE OF CONTENTS

	<u>Paragraph No.</u>
I. INTRODUCTION	1
II. BACKGROUND	4
III. DISCUSSION	6
A. Vanity Numbers	6
B. Reservation of Toll Free Numbers	15
1. Reservation Process	15
2. Initial Reservation of 888	24
C. Tariffs	41
D. Directory Assistance	55
V. CONCLUSION	58
VI. ORDERING CLAUSES	59

Appendix A: List of Parties Filing Comments

I. INTRODUCTION

1. On January 24, 1996, the Commission issued an Order¹ that delegated authority to the Chief of the Common Carrier Bureau ("Bureau") to resolve the issues raised in this docket² that are essential to the industry opening the 888 toll free service access code ("SAC") on schedule. Toll free service using the 888 SAC is currently scheduled to begin on March 1, 1996. In order to ensure that the industry is prepared to begin transmitting toll free calls using the 888 code on March 1, subscribers must be allowed to begin reserving numbers in the 888 code in advance of this date.

2. In this Report and Order, the Bureau agrees with the SMS/800 Number Administration Committee ("SNAC") that Responsible Organizations ("RespOrgs") should poll their 800 subscribers to determine which numbers subscribers may want replicated in 888. We expect that RespOrgs will continue this polling process, but only with respect to commercial subscribers. We direct Database Management Services, Inc. ("DSMI")³ to set aside those 888 numbers identified by the RespOrgs as a result of this polling process by placing these "vanity numbers"⁴ in "unavailable" status⁵ until the Commission resolves

¹ Toll Free Service Access Codes, Order, CC Docket No. 95-155, FCC No. 96-18, (adopted January 24, 1996).

² Toll Free Service Access Codes, Notice of Proposed Rulemaking, CC Docket No. 95-155, FCC No. 95-419 (adopted October 4, 1995) ("NPRM").

³ DSMI is a subsidiary of Bellcore, which, in turn, is wholly owned by the seven Regional Bell Operating Companies ("RBOCs"). DSMI subcontracts management of the Number Administration Service Center ("NASC"), which provides user support for the Service Management System ("SMS") database, to Lockheed IMS. Database hardware is provided under contract by Southwestern Bell Telephone Company ("SWBT"). DSMI administers the SMS, which is a computer system that enables "RespOrgs" to enter and to amend easily the data about toll free numbers within their control. The SMS then shares this information with regional local exchange carrier ("LEC") databases referred to as service control points ("SCPs"). The entire system is referred to as the SMS database. There are ten regional 800 SCP databases in the United States independently owned by Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Pacific Telesis, SBC Communications, Southern New England Telephone Company ("SNET"), Sprint (Local), and U S West.

⁴ For purposes of this Report and Order, we are using the term "vanity number" to describe a number that a subscriber requests be made unavailable during the initial 888 reservation period.

⁵ A number that is designated as "unavailable" in the SMS database is not available for assignment to any toll free subscriber. See Industry Guidelines for 800 Number Administration, § 2.4.9 (June 8, 1995) ("Industry Guidelines").

whether these numbers ultimately should be afforded any permanent special right or protection. We also conclude that the entire "888-555" NXX should be designated "unavailable" until the Commission resolves those issues that will permit competitive toll free directory assistance services.

3. With vanity numbers and "888-555" numbers set aside, we conclude that the remaining 888 numbers should be available on a first come, first served basis subject to the limitations set forth in this Report and Order. RespOrgs may begin reserving 888 numbers for their subscribers at 12:01 a.m. on February 10, 1996. A conservation plan for 888 numbers is necessary to protect the toll free database system from an overload that could possibly cause a temporary shutdown of the reservation process. We also conclude that a limited conservation plan is necessary for 800 numbers until 888 has been successfully and ubiquitously deployed. Further, we conclude that, for tariffing purposes, 888 service should be treated like 800 service and that the associated investment and expenses of carriers regulated by price caps should not be given exogenous cost treatment. Additional issues addressed in the NPRM in this docket will be resolved in a subsequent decision.

II. BACKGROUND

4. In October 1995, the Commission initiated a rulemaking proceeding to ensure that in the future, toll free numbers are allocated on a fair, equitable, and orderly basis.⁶ Generally, the NPRM sought comment on proposals to: (1) promote the efficient use of toll free numbers; (2) foster the fair and equitable reservation and distribution of toll free numbers; (3) smooth the transition period preceding introduction of a new toll free code; (4) guard against warehousing of toll free numbers; and (5) determine how toll free vanity numbers should be treated.⁷

5. Specifically, the Commission sought comment on the definition of vanity numbers and whether to permit holders of these toll free numbers a right of first refusal for corresponding numbers in the 888 code.⁸ The Commission also sought comment on how the reservation process for new toll free codes should unfold,⁹ the mechanics of introducing new toll free SACs,¹⁰ and the tariff rules and procedures to govern the new toll free service

⁶ See supra n. 2.

⁷ We discuss the issues posed by vanity numbers more fully in Section III.A.

⁸ A right of first refusal would permit the holder of an 800 number to have a superior right vis-a-vis all other interested parties to receive the equivalent 888 number. See NPRM at para. 41.

⁹ Id. at para. 23.

¹⁰ Id. at paras. 24-25.

offerings.¹¹ Comment was also solicited on whether 800 Directory Assistance ("DA") and 888 DA should be combined into interchangeable toll free DA service, and whether such a service should be open to competition.¹² This Report and Order addresses only these issues that are essential to the opening of the 888 toll free code on March 1, 1996.

III. DISCUSSION

A. VANITY NUMBERS

1. Background

6. In the NPRM, the Commission defined a vanity number as "a telephone number for which the letters associated with the number's digits on a telephone handset spell a name or word of value to the number holder."¹³ The NPRM broadened the definition of vanity numbers for the purpose of this proceeding to include any numbers in which the holders have a particular interest, be it economic, commercial or otherwise.¹⁴

7. The NPRM also sought comment on the potential number of corresponding vanity numbers that might be reserved in 888 and subsequent toll free codes if the Commission concluded that subscribers should be able to prevent others from gaining access to numbers in newly opened codes used for toll free dialing if the last seven digits of those numbers were the same as the last seven digits of the 800 numbers assigned to those subscribers.¹⁵ The Commission asked commenters to identify the total quantity of existing vanity numbers or a method for ascertaining how many numbers are or should be regarded as vanity numbers. The Commission sought this information, first, so that it could assess the viability of granting a right of first refusal to current holders of 800 vanity numbers for the equivalent 888 numbers and, second, to ascertain the impact such a right of first refusal would have on competition.¹⁶

¹¹ Id. at para. 56.

¹² Id. at para. 48.

¹³ Id. at para. 35. Examples of vanity numbers given in the NPRM include "1-800-THECARD" and "1-800-FLOWERS." Id.

¹⁴ Id. Numbers included in this category consist of toll free numbers dedicated for emergency recall situations or consumer inquiries. Id. For example, companies producing over-the-counter medications often include a customer service number on the packaging.

¹⁵ Id. at para. 40.

¹⁶ Id.

2. Comments

a. Definition of Vanity Numbers

8. Various commenters suggest differing definitions for vanity numbers. Ameritech, for example, suggests six possible categories of vanity numbers: (1) numbers corresponding to letters spelling a subscriber's product (e.g., "1-800-FLOWERS"); (2) numbers corresponding to letters spelling a subscriber's name (e.g., "1-800-HOLIDAY"); (3) numbers that begin with "4" or "2" and end with a product or subscriber's name (e.g., "1-800-4-TRAVEL"); (4) numbers for which the last four digits spell a product or subscriber's name; (5) numbers that are easily remembered; and (6) numbers that have been heavily marketed.¹⁷ The 800 Users Coalition asserts that product information numbers or reservation numbers for hotels and airlines that generate large volumes of traffic, should also be included within the definition of vanity numbers.¹⁸ SWBT contends that a logical extension of the definition would include every emergency and hot line number.¹⁹ LDDS Worldcom ("LDDS") asserts that the definition should be broadened beyond mnemonic terms to recognize that the digits themselves may be of value to the toll free subscriber.²⁰

9. AT&T maintains that RespOrgs should determine which of their 800 numbers qualify as vanity numbers,²¹ while LDDS asserts that toll free subscribers should define the ultimate value of their numbers.²² AirTouch Paging ("AirTouch") declares that there is no fair means of determining what constitutes a vanity number,²³ while Personal Communications Industry Association ("PCIA") states that the Commission definition is

¹⁷ Ameritech Comments at 30. See also AT&T Comments at 27 (numbers that are advertised, widely known and accepted by the public, and called by customers); Americas Carrier Telecommunications Association ("ACTA") Comments at 17 (numbers that can be translated into a word or name).

¹⁸ 800 Users Coalition Comments at 14.

¹⁹ SWBT Comments at 16.

²⁰ LDDS Comments at 13.

²¹ AT&T Comments at 27.

²² LDDS Comments at 13.

²³ AirTouch Comments at 14, n. 30. See also GTE Comments at 10, n. 16 (concerned that a significant amount of numbers may be taken out of circulation if the definition of vanity numbers is too amorphous).

overly broad and "precludes meaningful comment."²⁴ As part of its proposed plan for 888 network implementation, the SNAC defines a process that allows RespOrgs to contact their current 800 subscribers to see which numbers those subscribers might want replicated in 888.²⁵ The criteria used to determine which subscribers would be contacted is left to the discretion of each RespOrg. Once the subscriber base is identified, each RespOrg would be required to compile a computer tape containing requested numbers. The tapes would then be sent to DSMI who, after conducting certain verification procedures, would mark these numbers for the "unavailable" status. The polling process was scheduled for completion in mid-December.²⁶

10. Commenters addressing the question of how many existing 800 numbers would be classified as vanity numbers arrive at widely varied estimates of the potential pool. SNAC, for example, conducted a survey indicating that 24% of existing 800 numbers were identified as vanity numbers. SNAC's survey also indicated that that same percentage of subscribers would want to replicate their numbers in 888.²⁷ TLDP Communications, Inc. ("TLDP"), considering as vanity numbers only those that translate into names or words, estimates the quantity at between 10% and 20%, using a "brief mathematical analysis."²⁸ The 800 Users Coalition used data collected from coalition members, holding approximately 14,000 800 numbers, and from the AT&T Toll Free Directory, containing 180,000 published 800 numbers, to arrive at its 5% to 6% figure.²⁹ The 800 Users Coalition also noted that high volume numbers face the same problems as vanity numbers and consequently should be afforded the same protections as vanity numbers.³⁰ Ameritech contends that it is virtually

²⁴ PCIA Comments at 10-12.

²⁵ SNAC Comments at 13-14. The SNAC is one of six industry committees included within the Ordering and Billing Forum ("OBF"). OBF "provides a forum for customers and providers in the communications industry to identify, discuss and resolve national issues which affect ordering, billing, provisioning and exchange of information about access service and related industry matters." Id. at 2. The SNAC is responsible for identifying, developing, and implementing the resolution of issues involving the support of the SMS database. Id.

²⁶ Id. at 13-14.

²⁷ SNAC Comments at 16, Appendix B. See also Sprint Comments at 18 (citing SNAC survey); NYNEX Comments at 7 (estimating the number at 25%).

²⁸ TLDP Comments at 2-3. See also Telecompute Comments at 4 (no more than 25% of all seven digit numbers "spell" anything).

²⁹ 800 Users Coalition Comments at 15-17.

³⁰ Id.

impossible to estimate the scope of vanity numbers because the definition is so broad and subjective.³¹

11. In a letter dated January 18, 1996, DSMI informed the bureau that RespOrgs had requested to have approximately 310,000 888 numbers protected, thus providing additional evidence of the large number of 800 numbers that would be classified as vanity numbers.³²

3. Discussion

12. Defining vanity numbers is a daunting undertaking. Some numbers are valued for their mnemonic equivalent, while other numbers are valued for, among other things, the fact that their digits are easily memorized. This Report and Order will address only those issues essential to assuring the 888 SAC can be opened to the general public on March 1, 1996. We propose, therefore, to assure interim protection for all equivalent 888 numbers designated by current 800 subscribers by setting those 888 numbers aside during the initial 888 reservation period. We find that the only numbers ineligible for such treatment are 888 numbers equivalent to personal or residential 800 numbers. We find that, in contrast to other 800 subscribers, personal subscribers have no commercial interest in their 800 numbers that competitors might seek to undermine.³³ The determination as to whether a subscriber is a residential or commercial subscriber shall be determined by the terms of the 800 tariff under which a subscriber is taking service. Consequently, only commercial users have any potential right of protection.

13. Based on DSMI's January 18th letter,³⁴ we estimate that approximately 310,000 numbers will eligible to be set aside during the initial 888 reservation period. We note, however, that this estimate may grow in light of the actions taken below where we request that RespOrgs continue to identify their 800 subscribers that may wish to have their numbers replicated in 888. As discussed more fully below, we will defer, subject to one modification, to that polling process to identify those numbers that shall be set aside.

³¹ Ameritech Comments at 30. See also LDDS Comments at 13 (impossible at this time to estimate the quantity of vanity numbers); Bell Atlantic Comments at 7 (no way of knowing the quantity of vanity numbers currently in use because Bell Atlantic does not know how its customers are using their numbers).

³² See Letter from Michael J. Wade, President, DSMI to Kathleen B. Levitz, Deputy Bureau Chief, Common Carrier Bureau, FCC, dated January 18, 1996.

³³ We anticipate that 800 service providers will act promptly in resolving and/or correcting billing errors experienced by personal 800 users after the deployment of 888.

³⁴ See supra n. 32.

14. At this time we do not decide whether these numbers ultimately should be afforded any permanent special protection or right. We arrive at this conclusion because in light of our decision to have all 888 numbers corresponding to vanity numbers classified as unavailable, a decision about permanent protection is not essential to the opening of the 888 code. We note, however, that postponing the decision will minimize consumer confusion during the initial transition to the 888 service access code. That is, by affording special rights at this time, consumers may wrongly assume that all 800 and 888 numbers are interchangeable.³⁵ Such a result may seriously undermine the public awareness and education efforts now underway to inform consumers of the new 888 toll free code.³⁶ Deferring the decision on special rights will permit the Commission to consider fully the consequences of a final decision on the fair, equitable, and orderly allocation of toll free numbers, as well as the economic ramifications of that decision to the current 800 subscribers seeking replication in 888. We anticipate that the Commission will resolve the vanity number issue and will identify what set of numbers, if any, is to receive permanent protection, as well as the scope of that protection, within the year.

B. RESERVATION OF TOLL FREE NUMBERS

1. Reservation Process

a. Background

15. The NPRM noted that under existing Industry Guidelines, toll free numbers are reserved on a first come, first served basis. The Guidelines permit each RespOrg to reserve up to 1000 numbers or 15% of its total quantity of working toll free numbers, whichever is greater, at any given time.³⁷ The NPRM noted that certain large RespOrgs use a mechanized generic interface ("MGI"), which provides a direct interface between a RespOrg's computer operations system and the SMS database and permits the RespOrg to reserve mass quantities of toll free numbers rapidly.³⁸ The NPRM noted that some RespOrgs' use of MGIs may place smaller, less technologically sophisticated RespOrgs at a competitive disadvantage because they do not have the capacity to reserve numbers in rapid

³⁵ See NYNEX Comments at 7-8; United States Telephone Association ("USTA") Comments at 4-6; U S West Comments at 18-24.

³⁶ In the NPRM, the Commission noted that both the Commission and the telecommunications industry have begun educational initiatives in an effort to assure that the public is fully informed of toll free 888. NPRM at para. 49. The NPRM sought comment on whether further efforts are necessary to improve public awareness of the introduction of 888. Id. This issue will be addressed in a subsequent Order.

³⁷ NPRM at para. 23.

³⁸ Id. at n. 57.

order. The advantage enjoyed by users of MGI lies particularly in their ability to obtain highly desirable vanity numbers.³⁹ Specifically, the NPRM sought comment on a number of issues concerning the toll free reservation process: (1) whether use of an MGI should be permitted; (2) whether existing reservation guidelines should be amended; (3) whether existing reservation guidelines should be codified; (4) whether there should be mandatory dispute resolution if two parties request the same number; (5) whether there should be a lottery in the event dispute resolution failed; and (6) whether there should be different reservation procedures for codes in high demand.⁴⁰

b. Comments

(1) Amending Existing Reservation Guidelines

16. The majority of commenters support the existing first come, first served toll free reservation process.⁴¹ MCI, for example, asserts that the first come, first served concept is consistently applied to numbering resources, both toll free and beyond.⁴² AT&T maintains that the first come, first served policy is "firmly grounded in established procedures that are simple, efficient, and inexpensive to administer."⁴³ LDDS contends that first come, first served is the most equitable and least complicated way to apportion toll free numbers, and best matches demand with supply.⁴⁴ Sprint asserts that first come, first served is a straightforward and long-established allocation method that is well understood by both RespOrgs and subscribers.⁴⁵

17. Several commenters generally support the first come, first served reservation policy, with some refinements. SNET, for example, advocates a "60 second lock out

³⁹ Id. at para. 23.

⁴⁰ Id.

⁴¹ See, e.g., Ameritech Comments at 15; Allnet Communication Services, Inc. Comments at 6; GTE Comments at 8.

⁴² MCI Comments at 11.

⁴³ AT&T Comments at 13.

⁴⁴ LDDS Comments at 7.

⁴⁵ Sprint Comments at 8, n.4. Sprint also maintains that the first come, first served reservation procedure has been accepted by both the Commission and the courts (citing Wold Communications, Inc. v. FCC, 735 F.2d 1465, 1469-70 (D.C. Cir. 1984); Spanish International Network, Inc. v. RCA American Communications, Inc., 78 FCC 2d 1451, 1465-66 (1980)).

period" during which a RespOrg could reserve a number without any other RespOrgs intervening.⁴⁶ Under the current framework, SNET asserts that the system sometimes freezes and a RespOrg cannot reserve a number in the 60 second interval. SNET contends that such a system favors RespOrgs able to log on to the SMS database directly and to use mechanized interfaces over manual access methods.⁴⁷ Scherers Communications Group, Inc. ("Scherers") supports imposing limits on the volume of numbers a RespOrg can reserve during any 15 minute period because such a system would allow even the smallest RespOrg equal access to vanity numbers and would provide the database with adequate time to respond.⁴⁸ Unitel Communications, Inc. ("Unitel") advocates a first come, first served policy, as long as all RespOrgs have equivalent capacity and equivalent priority to the reservation system.⁴⁹ Joseph Page supports one exception to the first come, first served policy, for holders of 800 numbers protected by federal trademark law. Such 800 holders would automatically receive the equivalent 888 number.⁵⁰

(2) Codifying Reservation Guidelines

18. Most commenters addressing this issue support codification of the industry's

⁴⁶ SNET Comments at 5, 10-11.

⁴⁷ Id.

⁴⁸ Scherers Comments at 10. See also Qwest Communications Corporation ("Qwest") Comments at 5 (supporting first come, first served policy as long as a RespOrg's "first bite" at numbers is limited in some reasonable way, such as limiting the quantity of numbers that can be drawn from the database in a given period or requiring an affirmative request); Paging Network, Inc. ("PageNet") Comments at 9-10 (supporting special and temporary measures when 888 code is first opened that would rank all RespOrgs in numerical order and would permit each RespOrg to reserve a limited quantity of numbers during its reservation time); MFS Communications Company, Inc. ("MFS") Reply Comments at 5-6 (supporting a circuit breaker or cap on the total quantity of numbers any RespOrg may consume within a given period of time); Eastern Tel Long Distance Service, Inc. ("Eastern Tel") Reply Comments at 2-3 (same).

⁴⁹ Unitel Comments at 2.

⁵⁰ Joseph Page Comments at 5-6. See also Communications Venture Services, Inc. ("CVS") Comments at 2-3 (supporting a right of first refusal for "8XX-555" numbers to holders of equivalent 555 line numbers, since "8XX-555 numbers are essential to the effective activation of national 555 numbers; also supporting the enforcement of reservation guidelines through economic incentives, disincentives, and reclamation).

reservation guidelines.⁵¹ Sprint, for example, supports codification because the guidelines would then be mandatory rather than voluntary.⁵² Sprint recommends that any Commission rules cite directly back to the Industry Guidelines⁵³ to provide the industry with flexibility to revise the rules to address changing circumstances. Sprint supports subjecting any such industry revisions to Commission review and possible placement on public notice on an expedited pleading cycle.⁵⁴ BellSouth advocates codification because it would permit the Commission to assert its enforcement powers against any infractions.⁵⁵ Ameritech, on the other hand, opposes codification because it could deny the industry the needed flexibility to amend the guidelines to address changing circumstances.⁵⁶

(3) MGI

19. Several commenters contend that use of an MGI is fundamentally unfair and effectively skews the reservation process in favor of the larger RespOrgs.⁵⁷ SNET, for example, maintains that use of direct log-ons and use of mechanized interfaces places small RespOrgs that use manual access methods at a competitive disadvantage.⁵⁸ Other commenters do not lay blame on use of an MGI, but attribute mass reservation abuses to computer-generated transactions in general.⁵⁹ Bell Atlantic, for example, contends that the problem arises when a RespOrg connects a computer to its system, searches for numbers, and reserves them in rapid order. Bell Atlantic maintains that this process can be accomplished with a dial-up system enhanced by a personal computer just as easily as it can

⁵¹ See, e.g., Promoline, Inc. ("Promoline") Comments at 8, n. 18; Telemation International, Inc. ("Telemation") Comments at 5; MCI Comments at 10.

⁵² Sprint Comments at 10. See also Pacific Bell and Nevada Bell ("Pacific") Comments at 6,4,2 (supporting mandatory guidelines).

⁵³ RespOrgs' actions and responsibilities are governed by voluntary industry guidelines. See generally Industry Guidelines (June 8, 1995).

⁵⁴ Sprint Comments at 10.

⁵⁵ BellSouth Comments at 3.

⁵⁶ Ameritech Comments at 17. See also U S West Reply Comments at 9.

⁵⁷ See Ameritech Comments at 16-17; ACTA Comments at 13, n.7; MFS Comments at 7; BellSouth Comments at 2, n.3; SNET Comments at 10.

⁵⁸ SNET Comments at 10.

⁵⁹ See Bell Atlantic Comments at 4-5; SWBT Comments at 8-10; U S West Comments at 11-12.

be accomplished with MGI.⁶⁰ SWBT asserts that, compounding the problems with the mass reservation process, these mass transactions apparently do not represent actual customer orders. It notes that such random search and reservation transactions may violate the intent of the Industry Guidelines that there is an actual subscriber for each toll free number.⁶¹ SWBT supports prohibiting all mass computer-generated transactions, as well requiring each RespOrg to report its number of transactions on a daily basis. The Commission would then monitor for major spikes and investigate as necessary.⁶² Several commenters assert that use of an MGI is critical for efficient processing of the large volume of transactions large RespOrgs must process, and RespOrgs choosing to use an MGI should not be penalized for efficiency and responsiveness to customers' needs.⁶³ In addition, some commenters contend that MGI is a tariffed service,⁶⁴ available to any RespOrg that decides, based on an assessment of relative costs and benefits, to install such a capacity. To penalize RespOrgs electing to make that business investment would be unfair.⁶⁵ Sprint asserts that strict enforcement of rules against hoarding and bartering, as well as limiting the amount of time a number may be held in reserved status, would more effectively promote the efficient use of toll free numbers than imposing limits on the use of MGI.⁶⁶

(4) Mandatory Dispute Resolution

20. The majority of commenters addressing this issue oppose any form of dispute

⁶⁰ Bell Atlantic Comments at 4-5.

⁶¹ SWBT Comments at 8-10.

⁶² Id.

⁶³ See MCI Comments at 11; Sprint Comments at 8-9, n. 6 and 7; U S West Comments at 11-12; SWBT Comments at 8-10; Bell Atlantic Comments at 4-5.

⁶⁴ The use of an MGI is included in the SMS tariff. See The Bell Operating Companies' Tariff F.C.C. No. 1, § 3.

⁶⁵ See Sprint Comments at 8-9, n. 6 and 7; MCI Comments at 11; AT&T Comments at 12, n. 22. Sprint maintains that MGI requires a nonrecurring activation charge of \$308,910 and a nonrecurring initial installation charge of \$212,015. Sprint Comments at 8-9, n. 6 and 7 (citing BOCs' Tariff No. 1, § 4.2(E)).

⁶⁶ Sprint Comments at 8-9, n. 6 and 7. But see Eastern Tel Reply Comments at 4-5 (asserting that checks such as an affirmative request requirement do not directly address the competitive drawbacks of MGI).

resolution.⁶⁷ Some commenters maintain that, as long as a first come, first served reservation policy is retained, there is no need for dispute resolution.⁶⁸ Sprint asserts that it is unclear how an arbitrator would determine who should receive a number in dispute, assuming each party has an equally legitimate use for the number.⁶⁹ Competitive Telecommunications Association ("CompTel") contends that it is unclear what incentive multiple entities would have to resolve a dispute over a number.⁷⁰ Other reasons cited in opposition to mandatory dispute resolution include the administrative burden,⁷¹ cost,⁷² delay,⁷³ and the possibility of profiteering.⁷⁴ Unitel, on the other hand, supports mandatory dispute resolution if discrepancies in equal access to the SMS database cannot be eliminated, to protect the interests of smaller RespOrgs.⁷⁵ Time Warner Communications Holdings, Inc. ("Time Warner") supports requiring proof of an affirmative request for the number as part of any dispute resolution process.⁷⁶

(5) Lottery

21. Numerous commenters also oppose a lottery system because it would not be necessary under a first come, first served reservation policy,⁷⁷ would impose tremendous administrative burdens,⁷⁸ and would exacerbate the delay in reserving toll free numbers.⁷⁹

⁶⁷ See, e.g., CompTel Comments at 4; Ameritech Comments at 15-16; LDDS Comments at 7.

⁶⁸ See MCI Comments at 11; AT&T Comments at 13; Sprint Comments at 8, n. 5.

⁶⁹ Sprint Comments at 8, n. 5.

⁷⁰ CompTel Comments at 4.

⁷¹ Pacific Comments at 6.

⁷² CompTel Comments at 4.

⁷³ Id. at 4. See also Ameritech Comments at 15-16; AirTouch Comments at 18.

⁷⁴ Ameritech Comments at 15-16.

⁷⁵ Unitel Comments at 2.

⁷⁶ Time Warner Comments at 5.

⁷⁷ AT&T Comments at 13.

⁷⁸ Pacific Comments at 6.

⁷⁹ Ameritech Comments at 15-16.

Some commenters also maintain that a lottery would invite abuse, as various entities may submit claims for numbers simply to exact payment from legitimate participants for withdrawing their claims.⁸⁰ Several commenters, however, support a lottery in certain circumstances. Telecommunications Resellers Association ("TRA"), for example, asserts that a lottery is the most equitable process for allocating scarce resources,⁸¹ while AirTouch considers a lottery a viable option for allocating numbers that should only be used for "single number requests by one or more parties."⁸² AirTouch also supports a lottery for highly desirable numbers, such as those with repeating digits or digit patterns, to prevent RespOrgs from reserving such numbers in blocks. AirTouch notes, however, that such a process would put additional burdens on the database administrator and may not, therefore, be feasible.⁸³ Time Warner advocates a lottery in the event dispute resolution does not work,⁸⁴ while Service Merchandise Company, Inc. ("Service Merchandise") supports a lottery if an incumbent subscriber fails to exercise its right of first refusal.⁸⁵

c. Discussion

(1) Reservation Guidelines

22. We conclude that the current first come, first served reservation policy as adopted in the Industry Guidelines should apply to 888 numbers subject to the conservation plan set forth in this Report and Order. Thus, for those numbers made available as of the date that early reservation begins, RespOrgs may reserve the 888 numbers on a first come, first served basis. First come, first served remains the most equitable, easily administered, and least expensive means of allocating toll free numbers. Further, we conclude that the use of MGI is an individual business decision made on the part of each RespOrg. We are not convinced that MGI alone is the major source of reservation abuses; rather, the use of certain

⁸⁰ Id. See also CompTel Comments at 5.

⁸¹ TRA Comments at 12. See also LCI, International ("LCI") Comments at 8. TRA suggests that the Commission could impose certain minimal criteria to assure that numbers are not wasted on "parties unable to offer the public the greatest benefits with those numbers." TRA Comments at 12.

⁸² AirTouch Comments at 18. AirTouch believes, however, that the first come, first served reservation process is "the most equitable and efficient means to reserved toll free numbers." Id.

⁸³ Id. See also Telemation Comments at 5-6 (supporting a lottery for high demand toll free numbers, such as vanity numbers and popular access codes, such as "555").

⁸⁴ Time Warner Comments at 5.

⁸⁵ Service Merchandise Comments at 5.

computer programs to complete mass transactions is of greater concern. We recognize that amending the permanent cap on reservations may respond to some of the concerns of commenters asserting that a first come, first served reservation policy combined with the use of MGI puts smaller RespOrgs at a competitive disadvantage. We anticipate that the Commission will address the permanent cap issue shortly. In the interim, the conservation plans discussed below should provide the necessary protection for smaller RespOrgs so that they are not placed at a competitive disadvantage.

23. Because we have decided to retain a first come, first served reservation policy for toll free numbers, and because such a system precludes more than one RespOrg from reserving the same number from the SMS database, both mandatory dispute resolution and a lottery system become unnecessary. Because we rely upon the reservation procedures set forth in the Industry Guidelines with respect to the first come, first served reservation policy, there is no need for additional Bureau action on this issue and consequently, we do not codify the guidelines at this time.

2. Initial Reservation of 888

a. Background

24. In the NPRM, the Commission sought comment on whether it should adopt rules that would assure there would be no immediate depletion of the new toll free code once 888 became operational.⁸⁶ The Commission was also concerned that the performance of the network facilities providing access to the SMS database, the data links connecting the SMS and the regional SCPs and the SMS database itself still function at the normal operational level and not be affected by the increased RespOrg activity when the 888 code is first released for reservation. For this reason, the Commission asked commenters to suggest a plan for gradually permitting RespOrgs to reserve numbers in the new toll free code for their subscribers. The Commission asked commenters to discuss the advantages and disadvantages of such a plan, how it should be implemented, and what role the Commission should play.⁸⁷

b. Comments

25. As part of its comments, SNAC filed a plan setting procedures to govern early reservation of 888 number that took into account the current unsatisfied demand for toll free numbers.⁸⁸ The SNAC recommends that this plan serve as a model for the procedures that

⁸⁶ NPRM at para. 24.

⁸⁷ Id.

⁸⁸ The SNAC plan is the product of an industry-wide effort by SNAC members. See generally SNAC Comments.

would govern opening additional SACs, beginning with 888.⁸⁹ Specifically, the SNAC plan proposes: (1) a process to identify those 800 numbers assigned to subscribers that wish to obtain the equivalent number in the 888 code; (2) the opening of the 888 code for number reservation as part of an effort to meet unsatisfied demand for toll free dialing numbers arising during the 800 number conservation plan; and (3) ways to protect the SMS database hardware and operation from reaching its processing capacity which, in turn, will affect the overall performance of the SMS database and the data links connected between it and the regional SCPs. The SNAC plan sets a start and completion date for each of its steps. Each step is designed to move the industry closer to handling 888 traffic on the public switched telephone network on March 1, 1996.⁹⁰ Crucial elements of the SNAC plan include step-by-step introduction of the new toll free SAC and early 888 number reservation while 800 numbers remain available. SNAC states that without a step-by-step approach, 888 numbers would first be released for reservations on March 1, 1996. This could impact the SMS data processing because the sudden increase in RespOrg activity, both in reserving numbers and in transferring new numbers to working status, could cause the SMS to send the necessary data messages to all regional SCPs.

26. First, the SNAC reached consensus on a method that would identify those 800 numbers assigned to subscribers that wish to replicate their number in the 888 code and on a procedure to set aside those numbers in the SMS database.⁹¹ Second, the SNAC agreed to direct RespOrgs to contact their 800 subscribers to designate those numbers that subscribers may want to replicate in the 888 SAC. Third, once these "vanity numbers" are identified, SNAC maintains that DSMI should mark these them "unavailable" in the SMS database. Finally, once designated as unavailable, these numbers would not be released for reservation at the same time that the rest of the 888 code is available for reservation.⁹²

27. SNAC also maintains that, in order to open the 888 code and not have the anticipated increased RespOrg activity overburden the SMS database infrastructure, there must be some temporary and limited changes to the August 800 number allocation plan.⁹³ SNAC suggests that as a partial response to current unmet demand for toll free numbers, the current allocation of 29,000 800 numbers per week should be doubled for one week prior to

⁸⁹ Id. at 13. Each toll free SAC will provide 7.9 million numbers.

⁹⁰ Id.

⁹¹ Id. at 14.

⁹² Id.

⁹³ See Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau to Michael Wade, President, DSMI, dated August 17, 1995 ("Wallman Letter III") for a description of the August allocation plan.

the first week when 888 reservations⁹⁴ are accepted. Under this proposal, RespOrgs could reserve twice as many 800 numbers for subscribers still awaiting numbers as they are permitted to reserve under the August 800 conservation plan.⁹⁵ SNAC maintains that its proposal would also allow RespOrgs to put these newly reserved 800 numbers in service before the March 1, 1996 deployment of 888. Then, in the remaining weeks preceding March 1,⁹⁶ SNAC urges that the weekly allocation of 29,000 toll free numbers be tripled to 87,000 numbers per week. SNAC proposes that this allocation would be met by taking 29,000 numbers from the pool of 800 numbers and the remaining 58,000 numbers from the new 888 resource. The SNAC affirms that the capability in the SMS database to distinguish between 800 reservation and 888 reservation will allow the Commission to maintain its 800 conservation measures while gradually introducing the 888 numbers.⁹⁷

28. The SNAC asserts that its plan hinges on the Commission's willingness to accept early reservation of 888 numbers. Without early reservation, it argues, the SMS/800 database would suffer significant stress that could be potentially disastrous to both 800 and 888 services nationwide.⁹⁸ For example, SNAC states that the provision of emergency toll free service (e.g., service for natural disasters) might become impossible because of system backlog, and any repairs or maintenance of the computers that are the SMS hardware and require access to the SMS database system could be significantly delayed.⁹⁹

29. Commenters generally support a reservation period for 888 numbers that begins

⁹⁴ The SNAC determined that the early reservation process should begin six weeks prior to March 1, 1996, so its plan would have begun during the week of January 14-21, 1996 as week one. This date was based on both the earliest possible date the SMS/800 database could handle 888 reservations and the time needed for the RBOCs to file tariffs that would govern access to the 888 database. See SNAC Comments at 14-15.

⁹⁵ See Wallman Letter III.

⁹⁶ Weeks 2 through 6 would be those between January 21 to February 25, 1996.

⁹⁷ SNAC Comments at 15.

⁹⁸ Id. Many commenters support the SNAC plan. See, e.g., BellSouth Comments at 9; Ameritech Comments at 19; Sprint Comments 12; LCI Comments at 7; Pacific Comments at 6-7; LDDS Comments at 7. Pacific hopes the SNAC plan will avert any potential problems posed by the introduction of the 888 access code and urges the Commission to allow the industry to administer the transition to the new code. Pacific Comments at 6.

⁹⁹ SNAC Comments at 15.

several weeks before 888 toll free service is introduced.¹⁰⁰ Ameritech asserts that the reservation process for 888 numbers should begin "sufficiently in advance of the date 888 access is implemented" so that each RespOrg has enough time to reserve the numbers it needs prior to implementation of 888 access. It also contends that the Commission should limit the number of reservations that each RespOrg can make in a single day.¹⁰¹ BellSouth agrees and adds that without a plan permitting early reservation, substantial demand for 888 numbers could impair the downloading function between the SMS database and the SCPs.¹⁰² AT&T suggests that the opportunity for early reservation be extended only to new 888 requests and 800 subscribers exercising a right of first refusal.¹⁰³ AT&T would not, however, ask the Commission to continue this policy once the new SAC numbers became available for calling from the general public, and would instead rely on a first come, first served reservation policy for toll free numbers. AT&T argues that the first come, first served process is "firmly grounded" in existing procedures, and is easy to implement and inexpensive to administer.¹⁰⁴ Further, AT&T asserts that new number requests should be given "activation priority" over "vanity number replication requests."¹⁰⁵ Cable and Wireless, Inc. ("CWI") reaffirms that early reservation should be allowed if replication is permitted.¹⁰⁶

30. Some commenters think the Commission should leave the current 800 conservation plan in place,¹⁰⁷ or adopt a modified conservation plan, for a period beginning March 1, 1996.¹⁰⁸ CWI contends that the Commission should continue to limit number reservation during the initial period after March 1, 1996 to prevent overloading the SMS database system and accelerated exhaustion of 888 numbers. CWI maintains that two weeks is an adequate time to extend a "controlled reservation" plan so that pent up demand for toll

¹⁰⁰ Id. See also, AT&T Comments at 13; SWBT Comments at 10; U S West Comments at 12; Bell Atlantic Comments at 5; ACTA Comments at 4; Pacific Reply Comments at 3; AirTouch Reply Comments at 29; LDDS Reply Comments at 5.

¹⁰¹ Ameritech Comments at 18.

¹⁰² BellSouth Comments at 9.

¹⁰³ AT&T Comments at 14.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ CWI Comments at 8.

¹⁰⁷ See Wallman Letter III.

¹⁰⁸ See, e.g., GTE Comments at 4; Allnet Comments at 6; CWI comments at 10.

free numbers is met.¹⁰⁹ GTE asserts that an allocation process should be kept in place for at least six months after the March 1, 1996 ready date, after which the process can be modified subject to past activity and future projections.¹¹⁰

31. Other commenters maintain that 888 numbers should be released in phases after March 1, 1996. SWBT argues that if the guidelines were to ensure that toll free numbers would be assigned only to bona fide customers, the threat of a spike in numbers drawn from the database would be eliminated. But, absent effective rules, SWBT maintains that the Commission should release for reservation "a three or six month supply of 888 numbers in NXX blocks of 10,000 numbers."¹¹¹ SWBT further suggests that the Commission then closely monitor the consumption of numbers to determine if they are being "used in an orderly manner."¹¹² Only then, SWBT suggests, should the Commission authorize release of the next set of NXXs to the spare pool.¹¹³ U S West agrees that phased introduction of new toll free numbers is needed to allow orderly process and implementation of new codes.¹¹⁴ CVS asserts that one hundred 888 NXX codes should be released incrementally and sequentially each day until all NXXs are generally available.¹¹⁵ CVS continues by saying that general oversight of implementation should not be undertaken by the Commission, but by the North American Numbering Council ("NANC").¹¹⁶

32. Only one commenter does not support releasing 888 numbers in phases. TRA asserts that all numbers should be available for reservation on the first date the public can place toll free calls using the new code. A gradual introduction of numbers could create a temporary, artificial shortage, fostering the rationing of numbers. TRA further claims that a plan under which numbers are gradually made available could be discriminatory and harmful to competition and industry growth.¹¹⁷

¹⁰⁹ CWI Comments at 10.

¹¹⁰ GTE Comments at 4.

¹¹¹ SWBT Comments at 10-11.

¹¹² Id.

¹¹³ Id. U S West also supports the Commission monitor the reservation process to make the necessary changes after March 1, 1996 (US West Comments at 12.)

¹¹⁴ U S West Comments at 12.

¹¹⁵ For example, the first 100 NXXs to be released would be 200 through 299.

¹¹⁶ CVS Comments at 3. See also Bell Atlantic Comments at 5.

¹¹⁷ TRA Comments at 12-13.

33. In an ex parte presentation, Vanity International expressed concern with the SNAC plan. It contends that the practices followed by some RespOrgs to collect requests from existing 800 subscribers who seek to reserve the 888 number corresponding to their assigned 800 number discriminate against smaller businesses.¹¹⁸ Vanity International argues that some RespOrgs have asked only large businesses whether they are interested in replicating their existing 800 numbers in the new 888 SAC. Vanity International argues that if the SNAC deadline of January 24, 1996 for submitting "protection requests" is honored, many 800 subscribers will forfeit any right to protect their equivalent 888 numbers. Vanity International asserts that such a result would be contrary to the Commission's stated goal of making the allocation of toll free numbers a fair and equitable process.¹¹⁹ In addition, Vanity International maintains that it is the right of the existing 800 subscribers to determine whether they would like to have those numbers protected, at least in the short term, in the 888 SAC. Vanity International states that by failing to inform all existing 800 subscribers of their right to seek protection, or by failing to inform them of the consequences of inaction, the RespOrgs have essentially preempted the rights of those uninformed subscribers.¹²⁰ Vanity International asks the Commission to extend the date by which 800 subscribers must submit protection requests and to require RespOrgs to poll all their subscribers about whether they wish to replicate their assigned 800 numbers in the 888 code.¹²¹

c. Discussion

1) Modification to the Current 800 Conservation Plan

34. Faced with the accelerating depletion of 800 numbers, the industry asked the Bureau in June 1995 to take extraordinary measures to ensure that 800 numbers would remain available until the time that the public could place toll free calls using numbers drawn from the 888 SAC. The Bureau determined that rather than allowing all 800 numbers to be assigned before 888 numbers could also be available to the public, the public interest would be served by developing a plan that would conserve 800 numbers until 888 numbers could be introduced. On June 13, 1995, the Bureau instructed DSMI to limit the amount of numbers any RespOrg may reserve in one week and also shortened the aging process for toll free numbers.¹²² That plan has been refined twice since its introduction.¹²³ Each time the plan

¹¹⁸ Ex Parte Comments of Vanity International at 1.

¹¹⁹ Id. at 3.

¹²⁰ Id. at 5-6.

¹²¹ Id. at 6.

¹²² See Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau to Michael Wade, President, DSMI, dated June 13, 1995 ("Wallman Letter I"). The "aging process" is defined as the period of time between disconnection or cancellation of a toll free number and

was modified by changing the allocation distribution among RespOrgs to better meet the needs of the industry while balancing the need to keep 800 numbers available until March 1996. Many commenters in this proceeding support continuation of the 800 conservation plan imposed by the Bureau, at least for a few months after March 1, 1996.¹²⁴ For reasons set forth below, we agree and find that continuation of the current conservation plan for a limited period will serve the public interest.

35. When the conservation plan was first introduced, industry projections anticipated all 800 numbers would be assigned as early as July 1995, a date well in advance of the projected date for 888 deployment. Because of the Bureau's conservation plan, however, DSMI now projects that 800 numbers will be available through June 1996.¹²⁵ Because it now appears that unassigned 800 numbers will be available several months after toll free calling using 888 numbers begins, we conclude that a temporary increase of the weekly allocation will serve the public interest.¹²⁶ All other conservation measures set forth in Wallman Letters I, II, and III remain unchanged. First, increasing the weekly allocation should help meet unsatisfied consumer demand for 800 toll free numbers. Second, because the 888 code is expected to be operational nationally in March, there is a reduced need to conserve the remaining spare 800 numbers. For these reasons, we find it appropriate to increase the total weekly allocation of 800 numbers, now set at 29,000, to 73,000 numbers for a limited period, i.e., for three weeks beginning at 12:01 A.M. Eastern Standard Time, January 28, 1996 and ending at 11:59 P.M. Eastern Standard Time, February 17, 1996. On February 18, 1996, the weekly allocation shall return to 29,000 numbers to ensure that 800 numbers continue to be available in the event that toll free calls to 888 numbers are not possible in some local service areas. We intend to end the 800 number conservation plan once we are convinced that 888 calls can be placed nationwide.

the point at which the number may be assigned to another subscriber. Industry Guidelines set the aging process at six months, with a provision that the period may be reduced to four months once the toll free resource is 95% exhausted. See Industry Guidelines at § 2.2.6. Effective June 14, 1995, the conservation measures imposed by the Bureau reduced the aging process to four months. See Wallman Letter I.

¹²³ See Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau to Michael Wade, President, DSMI, dated June 21, 1995 ("Wallman Letter II"). See also Wallman Letter III.

¹²⁴ See, e.g., U S West Comments at 12.

¹²⁵ See 800 Number Resource Utilization, presentation by DSMI, January 10, 1996.

¹²⁶ This includes the four month aging process, the 45 day limit on reservations, and certifications to DSMI.

36. For the reasons set forth above and in Wallman Letter III,¹²⁷ we find that the public interest will best be served if approximately 73,000 numbers are allocated among new and established RespOrgs¹²⁸ using the criteria of the August conservation plan set forth in that letter.¹²⁹ Thus, each RespOrg's allocation will be increased by a factor of 2.5.¹³⁰ Therefore, to calculate its new allocation, each RespOrg should multiply its current allocation by 2.5. Canada's weekly amount will also increase proportionally from 1,500 numbers to 3,775 numbers. We deem it essential to set aside 800 numbers for Canada in the interest of international comity. The minimum amount of numbers any RespOrg may receive each week in which the plan remains in effect will be 100 numbers. The Network Services Division will send to DSMI by facsimile a list of each RespOrg's new weekly maximum allocation.

2) Initial Reservation of 888

37. The SNAC's proposed plan assigns to each RespOrg the responsibility to identify those numbers that its 800 service subscribers wish to replicate in the 888 SAC. While we are encouraged by the efforts that the RespOrgs have already undertaken to identify this "protected" set of numbers, we are concerned by the comments of Vanity International, who asserts that some RespOrgs may be discriminating against smaller business subscribers by not asking them if they wish to replicate their 800 numbers in the 888 SAC. Each RespOrg has a direct relationship with those for whom the RespOrg maintains 800 database records and is consequently in the best position to obtain this information. It is, moreover, in the RespOrgs' best interest to contact their commercial 800 subscribers to determine whether those subscribers value their numbers enough to wish to replicate them in the 888 code. Such contacts may not only generate new business, but also may protect RespOrgs from liability to their 800 subscribers whom they did not contact. Therefore, we

¹²⁷ See supra n. 93.

¹²⁸ The August conservation plan groups RespOrgs into two categories: "New RespOrgs," those RespOrgs that came into existence subsequent to December 1, 1993; and "Established RespOrgs," those RespOrgs that existed prior to December 1, 1993. See Wallman Letter III.

¹²⁹ The August conservation plan set forth in Wallman Letter III responded to numerous requests from the RespOrgs suggesting that allocation based solely on a RespOrg's embedded base of 800 numbers as the second conservation plan prescribed, placed too much weight on historical market share and did not adequately acknowledge growth trends in the industry. The August plan, which looked at both the market share of each RespOrg at a specific point in time and the growth that RespOrg experienced in 1994, better reflects the dynamic nature of the toll free market, while still furthering our goal of conserving 800 numbers until 888 is deployed.

¹³⁰ This factor was determined by calculating the increase of 73,000 as compared to 29,000 (i.e., $73,000 \div 29,000$).

are adopting this portion of the SNAC plan, modified, however, by allowing additional time for RespOrgs to contact those commercial 800 subscribers they have not already polled. We encourage RespOrgs to honor all replication requests submitted to them by their commercial 800 subscribers. Under the modified SNAC plan we now adopt, all RespOrgs will have the ability to continue to poll their 800 commercial subscribers for one week to identify those commercial subscribers with an interest in obtaining the 888 numbers with the identical last seven digits as their assigned 800 numbers.

38. Once the RespOrgs have identified this "protected" set of numbers, they are responsible for sending the list of these numbers to DSMI no later than 11:59 P.M. Eastern Standard Time, February 1, 1996. Each list should identify requests from commercial subscribers who were either contacted by the RespOrg or who have contacted their RespOrg independently of the RespOrg's polling efforts. DSMI will then have one week to process the information in each RespOrg's list and place these 888 numbers in "unavailable" status¹³¹ by 11:59 P.M. Eastern Standard Time, February 8, 1996. This will allow DSMI sufficient time before it accepts reservation for 888 numbers to assign the equivalent 888 numbers to the "unavailable" status in the SMS. Once DSMI has concluded this process and has also marked all numbers in the "888-555 NXX" "unavailable,"¹³² early reservation of 888 numbers can begin at 12:01 A.M. Eastern Standard Time, February 10, 1996. We agree with the commenting parties that identifying these numbers and permitting early reservation is essential to avoiding the risk that the database, and the links between the database and the regional SCPs, will be unable to accommodate not only the demand for 888 numbers, but also the continuing needs of subscribers with 800 numbers. Finally, we agree with AT&T that a "first come, first served" reservation policy will best serve the public because it is simple, efficient, and less expensive to administer than any other reservation scheme. We subject the first come, first served policy only to the conservation plan discussed below.¹³³

3) Initial Conservation of 888

39. For the same reasons we have directed DSMI to permit reservation of 888 numbers in advance of the first date the network will support calls to each number, we conclude that the public interest would be served by adopting an 888 conservation plan. We intend this 888 conservation plan to achieve two goals: (1) to prevent the SMS from potential "system overload" created by increased RespOrg activity; and (2) to discourage a

¹³¹ These numbers should be held under the NASC RespOrg ID used previously.

¹³² See infra para. 57.

¹³³ We note, however, that carriers are still expected to comply with the Industry Guidelines that have not been modified by any of the Bureau's actions. For example, until the Commission rules otherwise, the cap on the quantity of toll free numbers that a carrier can reserve at any one time remains 15% of its total quantity of its total quantity of working numbers, or 1000 numbers, whichever is greater. See Industry Guidelines at § 2.2.5.

rush to reserve 888 numbers like the one that occurred when RespOrgs were first permitted to reserve the 800-555 pool of numbers in 1994.¹³⁴ We find that we must set the weekly allocation of numbers at a level that balances the needs of the RespOrgs, the technical limitations of the SMS, and the capacity of the data links between the SMS and the regional SCPs. A weekly allocation of 120,000 888 numbers appears to strike the appropriate balance. We expect this generous allocation of 888 numbers, in addition to the 800 numbers in the weeks preceding March 1, 1996, will offer RespOrgs a reasonable opportunity to meet their subscriber needs.¹³⁵

40. For the reasons set forth in Wallman Letter III,¹³⁶ we will set each RespOrg's share of the weekly allocation of 120,000 888 numbers on the same basis as its 800 allocation is calculated. Thus, to calculate each RespOrg's share of the weekly allocation plan, each should multiply their August allocation by a factor of 4.0.¹³⁷ Six thousand 888 numbers will be available for distribution to Canadian RespOrgs. Each RespOrg will be permitted to receive a minimum of 200 888 numbers per week. The Network Services Division will send DSMI a letter setting forth each RespOrg's maximum weekly allocation for 888 numbers. We will monitor number reservation and SMS database performance, and will reevaluate the continued need for this conservation plan after the March 1, 1996 deployment of the 888 code. We urge all RespOrgs to be sensitive to how their increased activity could affect SMS performance. The Bureau will modify this 888 conservation plan if toll free service experiences any decrease in service quality, whether in the processing of subscriber records or on the data links between the SMS and the regional SCPs. The Bureau will also carefully monitor and investigate any complaints from RespOrgs, SCP owners, or consumers.

C. TARIFFS

1. Background

41. In the NPRM, the Commission sought comment on tariffing issues related to

¹³⁴ That is, when 800-555 numbers became available for reservation a single RespOrg reserved 90% of the numbers within the first ten minutes of availability. See SNET Expedited Petition for Preliminary Injunction and Stay, Report and Order, DA 95-2141 (adopted October 6, 1995).

¹³⁵ In June 1995, 113,000 800 numbers were reserved from the SMS database in one week. The industry labelled this high activity as reaction to the imminent exhaust of 800 numbers.

¹³⁶ See supra n. 93.

¹³⁷ This factor was calculated by developing the ratio between 120,000 and 29,000 (i.e., $120,000 \div 29,000$).

the introduction of 888. The Commission anticipated that the majority of tariffing issues would be related to LECs' database access tariffs. Specifically, the Commission tentatively concluded that 888 service and subsequent toll free codes would be functionally equivalent to 800 services and should be treated accordingly. The Commission, therefore, sought comment on its tentative conclusion that existing Part 69 provisions for 800 service would also cover 888 service and the LECs would not need to obtain a waiver of Part 69 to open 888 toll free service.¹³⁸ Comment was also sought on any interim arrangements that a LEC might offer to its toll free database access customers during the period in which preparations for opening the 888 code for general use neared completion. Further, the Commission sought comment on the conclusion that any revisions to existing database access tariffs should be filed on not less than 45 days' notice.¹³⁹

2. Filing Procedures

a. Background

42. For purposes of addressing the tariffing issues raised in the NPRM, we must consider the Commission's action in the 800 Rate Structure Order.¹⁴⁰ In that Order, the Commission determined that LECs must price basic 800 database services on a per-query basis and that LECs subject to price cap regulation must treat basic 800 database service as a "restructured service."¹⁴¹ The Commission found that a per-query charge for 800 database service was appropriate because database queries are a distinct part of the set up of an 800 call and a per-query charge best reflects the costs of providing access to the 800 database.¹⁴² The Commission determined that 800 database service should be classified as a restructured

¹³⁸ NPRM at para. 56.

¹³⁹ Id.

¹⁴⁰ Provision of Access for 800 Service, Second Report and Order, 8 FCC Rcd 907 (1993) ("800 Database Rate Structure Order"), recon., CC Docket No. 86-10, FCC No. 95-487 (adopted December 4, 1995).

¹⁴¹ The Commission defines a "restructured service" as the rearrangement of an existing service. Carriers can restructure a service by changing an existing method of charging for or provisioning the service, or by changing a term or condition in, adding language to, or adding, consolidating, or eliminating rate elements appearing in the existing service's tariff. When a service has been restructured, the previous version of that service no longer exists. Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6824-6825 (1990) ("LEC Price Cap Order").

¹⁴² Id. at 6788.