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Federal Communications Commission FCC 97-123

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Toll Free Service Access Codes	)	CC Docket No. 95-155
	)	
Petition to Modify 888 Number Allocation Plan filed by LCI International, Inc.	)	NSD File No. 97-10
	)	
Petition to Modify 888 Number Allocation Plan filed by UniDial, Inc.	)	NSD File No. 97-15
	)	
Petition to Modify 888 Number Allocation Plan filed by Consolidated Communication Telecom Services Inc.	)	NSD File No. 97-16

SECOND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: April 4, 1997 Released: April 11, 1997

Comment Date: May 22, 1997
Reply Date: June 23, 1997

By the Commission:

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I. INTRODUCTION

1. Prior to March 1996, toll free telephone numbers in the United States were identified by their common 800 service access code ("SAC"). In the spring of 1995, the industry informed the Commission that the accelerated pace of reservation and use of 800 numbers was depleting their supply.[1] The industry sought the Commission's assistance because 800 numbers were likely to be depleted before introduction of the next toll free code, 888. The Commission, in October 1995, initiated this rulemaking to ensure that toll free numbers will be allocated among U.S. carriers on a fair, equitable and orderly basis.[2] The

[1] For a definition of the "reserved" status of a toll free number, see infra note 11.

[2] Toll Free Service Access Codes, Notice of Proposed Rulemaking, CC Docket No. 95-155, FCC No. 95-419 (released October 5, 1995) ("NPRM").

NPRM sought comment[3] 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 the 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.[4] The Commission delegated authority to the Common Carrier Bureau ("Bureau") to decide the issues essential to the March 1, 1996 opening the 888 SAC.[5] On January 25, 1996, the Bureau adopted the Bureau Order[6] addressing several issues, including the reservation of 888 numbers, tariffing for database access, 800 and 888 conservation plans, and the interim protection of vanity numbers in the 888 SAC.[7] The 888 SAC was deployed on March 1, 1996.

2. The 1934 Act, as amended, gives the Commission exclusive jurisdiction over "those portions of the North American Numbering Plan that pertain to the United States."[8] In this Second Report and Order, we conclude that §§ 1 and 251(e)(1) of Title II of the Communications Act, as amended by the Telecommunications Act of 1996, require the Commission to ensure the efficient, fair, and orderly allocation of toll free numbers. We conclude that "warehousing" is an unreasonable practice that violates Section 201(b) of the Communications Act and is also inconsistent with our obligation to ensure that numbers are made available on an equitable basis under § 251(e)(1). To deter warehousing, we require Responsible Organizations ("RespOrgs") to certify that they have a request from a potential subscriber for each toll free number reserved from the SMS database, and conclude that RespOrgs will be subject to penalty by the Commission for violation of this requirement.[9] We find that "hoarding" and "brokering" of toll free numbers are contrary to the public

[3] The full names and short names of parties filing comments and reply comments are in Appendix B. In the text of this Second Report and Order, parties are referred to by their short names.

[4] For purposes of this proceeding, vanity numbers have been defined as all equivalent 888 numbers designated for protection by existing commercial 800 subscribers. See Toll Free Service Access Codes, Report and Order, 11 FCC Rcd 2496, 2498 (adopted January 25, 1996) ("Bureau Order").

[5] Toll Free Service Access Codes, Order, 11 FCC Rcd 3045 (adopted January 24, 1996) ("Delegation Order").

[6] See n. 4 supra.

[7] The Bureau directed Database Services Management, Inc. ("DSMI") to set vanity numbers aside so that they could not be reserved until the Commission could address issues related to their assignment. Id. at 2504.

[8] See 47 U.S.C. § 251(e)(1).

[9] Warehousing occurs when a RespOrg obtains toll free numbers from the SMS database without having an identified subscriber for those reserved numbers.

interest and thus subject to sanction by the Commission.[10] We also shorten several of the "lag time"[11] periods currently permitted under the Industry Guidelines for 800 Number Administration ("Industry Guidelines"). We adopt a Further Notice of Proposed Rulemaking ("Further Notice") to seek further comment on what party or entity should administer the toll free database.

3. In this Second Report and Order, we decline to: (1) impose an escrow requirement on RespOrgs, 800 service providers, or third party agents; (2) require the use of

[10] Hoarding occurs when a toll free subscriber acquires more numbers from a RespOrg than it intends to use for the provision of toll free service. Brokering is the buying or selling of numbers.

[11] By "lag time," we mean the interval between a toll free number's reservation in the Service Management System (SMS) database and its conversion to working status, as well as the period of time between disconnection or cancellation of a toll free number subscriber's service and the point at which that toll free number may be reassigned to another subscriber. In the NPRM, we defined each of the nine categories into which a toll free number may be placed, and the lengths of time a number may, under Industry Guidelines, remain in each of these categories, as:

- "working" - a number that has been loaded into the SCPs and is being utilized to complete 800 service calls
- "assigned" - a number that has specific subscriber routing information entered by the RespOrg in SMS/800 and is pending activation in the SCPs. An 800 number may remain in this status until changed to "working" or for a maximum of 12 months, whichever occurs first.
- "reserved" - a number that has been reserved by a RespOrg for a subscriber. An 800 number may be held in this status for up to 60 days.
- "spare" - a number that is available for assignment by a RespOrg.
- "disconnect" - a number for which 800 service has been disconnected and an exchange intercept recording is being provided to inform callers of that status. After a designated interval, the 800 number status will change to spare.
- "transitional" - a number that has been disconnected for less than six months but no exchange intercept recording is being provided. At the end of six months, the 800 number status is systematically changed to spare.
- "suspend" - a number that has been temporarily disconnected and is scheduled to be reactivated. An 800 number may remain in this status until changed to working or for a maximum of 12 months, whichever occurs first.
- "unavailable" - a number that is not available for assignment due to an unusual condition. Requests to make a specific 800 number unavailable must be submitted in writing to the Number Administration Service Center (NASC) with the appropriate documentation of the reason for the request.
- "NXX not open" - an 800 number that is in an NXX code which is not open or available for general ten digit number assignment.

Industry Guidelines at § 2.4. See infra paras. 5-6 for an explanation of the SMS database.

personal identification numbers ("PINs") in conjunction with the use of some toll free numbers; (3) require partitioning of toll free service; (4) require carriers to provide a transitional gateway intercept during the transition to a new toll free code; (5) mandate special treatment for high volume numbers that may result in misdialed calls; (6) require an expansion of the data links to accommodate the heavy traffic associated with introducing new toll free codes; or (7) require a circuit breaker model.[12] We do not address whether "vanity" numbers should be afforded special treatment. Because we are deferring a decision on this issue, we also defer decisions on: (1) whether there should be a right of first refusal to numbers in subsequently opened toll free codes; (2) assignment of numbers initially set aside if we do not grant a right of first refusal; (3) trademark issues; (4) international issues; and (5) the release of designated vanity numbers at the end of the toll free assignment pool. We also do not address the implementation plan for additional toll free codes, the tracking of toll free numbers, or the deployment of competitive directory assistance.[13] We expect to address these issues in a subsequent order.

II. BACKGROUND

4. In 1967, AT&T established the 800 SAC.[14] Unlike traditional telephone calls, for which the calling party paid, 800 service subscribers agreed to pay for calls made to subscriber-designated numbers. Also unlike traditional calls, the called party's telephone number did not depend on that party's geographic location. These characteristics proved so valuable to businesses that the service flourished domestically and internationally.

5. In 1986, as a result of AT&T's divestiture of the Regional Bell Operating

[12] A circuit breaker model would imitate the circuit breaker rules adopted by the Securities Exchange Commission ("SEC") and the Commodities Futures Trading Commission ("CFTC") that restrict trading in volatile markets by restricting access to computerized trading systems and by allowing the markets to cool off by suspending trading for short periods of time. In the toll free number context, the proposed circuit breaker models would be triggered after the percentage of toll free numbers in the spare pool declined to a specific level.

[13] With specific regard to competitive directory assistance, we anticipate issuing a Further Notice of Proposed Rulemaking at a later date. As we noted in the NPRM at n. 91, on May 8, 1995, SNET filed a petition for declaratory ruling asking the Commission to require AT&T to enter into reciprocal compensation arrangements with other carriers that wish to offer 800 Directory Assistance. While SNET's petition is related to this proceeding, we defer its consideration at this time.

[14] A toll free number such as "800-NXX-XXXX" consists of three parts: (1) a three- digit numbering plan area ("NPA") or area code; (2) a three-digit central office code ("NXX"); and (3) a four-digit line number ("XXXX"). See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Report and Order, 10 FCC Rcd 4596 (1995) ("Ameritech Order").

Companies ("RBOCs"),[15] the Commission initiated the first proceeding to set Commission policies and rules governing 800 service ("800 Proceeding").[16] That proceeding shaped the current 800 service market, and led to the current technology for routing 800 telephone traffic. When the 800 Proceeding began, carriers routed traffic using the "NXX system," under which 800 subscribers could not change carriers without also changing their 800 numbers.[17] The RBOCs, along with some Independent Telephone Companies ("ITCs"), had begun to develop a database plan for routing 800 traffic which would allow subscribers to change carriers without changing their 800 numbers, thus fostering the developing competition in the 800 service market.[18] The Commission concluded that competition in 800 service was in the public interest and that the implementation of the database plan would foster such competition.[19] The Commission also concluded that AT&T should continue to offer 800 Directory Assistance under tariff, using the number "1-800-555-1212," but invited other parties to enter the market if they wished to do so.[20]

6. The database plan proposed by the RBOCs and some ITCs[21] necessitated modifications to the LEC networks. The Commission required the RBOCs and GTE to meet

[15] The seven RBOCs are: Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Bell and Nevada Bell ("Pacific"), Southwestern Bell, and U S West.

[16] See Provision of Access for 800 Service, Notice of Proposed Rulemaking, 102 FCC 2d 1387 (1986); Provision of Access for 800 Service, 4 FCC Rcd 2824 (1989) ("800 Order"), recon., 6 FCC Rcd 5421 (1991) ("800 Reconsideration Order"), further recon., 8 FCC Rcd 1038 (1993).

[17] For details about the NXX plan, see n. 8 of the NPRM.

[18] The ability of customers to retain the same number when changing their toll free service provider is referred to as "portability." See 800 Order, 4 FCC Rcd at 2825.

[19] See Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5904 (1991) (refusing to grant AT&T streamlined regulation of its 800 services because of the absence of 800 number portability); Competition in the Interstate Interexchange Marketplace, Second Report and Order, 8 FCC Rcd 3668, 3669 (1993) (finding that once the 800 database had been implemented, AT&T's 800 services were subject to substantial competition).

[20] Id.

[21] For further information regarding the database architecture in the RBOC plan, see n. 11 of the NPRM.

minimum database access time standards to avoid unreasonably long call set-up times.[22] The RBOCs and GTE met these requirements by utilizing Common Channel Signaling System 7 ("SS7") networks.[23] The new 800 database architecture required not only that LECs have SS7 technology, but also a new administrative database system known as the SMS that enables RespOrgs to enter and amend the data regarding 800 numbers within their control. The SMS shares this information with regional LEC databases referred to as Service Control Points ("SCPs"). The entire system is referred to as the SMS database.[24]

7. To obtain a toll free number, a subscriber must choose an entity to be responsible for managing that subscriber's SMS record and for coordinating with the subscriber's toll free service providers. The entity is known as a Responsible Organization (RespOrg), and only this entity can access and modify a subscriber's record in the SMS database. Any entity that meets certain eligibility criteria may serve as a RespOrg.[25] Industry

[22] See 800 Reconsideration Order, 6 FCC Rcd 5421 (1991). The Commission modified its original Order to permit each LEC to withdraw NXX access in favor of mandatory database access, provided that, by March 1993, no more than 3 percent of each LEC's 800 traffic experienced a database access time of greater than 5 seconds. The Commission also required each LEC offering mandatory database access, by March 1995, to meet the following requirements: (a) none of its 800 traffic could experience a database access time of greater than 5 seconds; and (b) the mean access time to the database for all its 800 traffic must be 2.5 seconds or less.

[23] See n. 13 of the NPRM. SS7 uses signaling transfer points ("STPs"), which are high-capacity data switches that act as traffic coordinators, to route messages containing information about a particular call between network switches with switch signaling points ("SSPs") and service control points ("SCPs"). For an 800 database query, SSPs originate the messages, and STPs route queries to the SCPs. SCPs then send a response via the STP back to the SSP, which uses the information to process the telephone call.

[24] There are ten regional 800 SCP databases in the United States, independently owned by Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Pacific Telesis, SBC Communications, SNET, Sprint (Local), and US West. Canada is a member of the North American Numbering Plan ("NANP"), which is "the basic numbering scheme that permits interoperable telecommunications service within the United States, Canada, Bermuda and most of the Caribbean." Administration of the North American Numbering Plan, Report and Order, 11 FCC Rcd 2588 (1995) ("NANP Order"). Canada's carriers also offer 800 portability to their customers and operate their own 800 SCP database. The U.S. territories of Puerto Rico and the U.S. Virgin Islands, also in the North American Numbering Plan, have portable 800 numbers. Bermuda and the Caribbean administrations of Anguilla, Antigua and Barbuda, Commonwealth of the Bahamas, Barbados, British Virgin Islands, Cayman Islands, Dominican Republic, Grenada, Guam, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos, do not currently have portable 800 numbers, and instead use the NXX system.

[25] For example, a RespOrg can be an IXC, a LEC, a wireless carrier, or a large organization like Westinghouse. A RespOrg may act as an 800 service provider, which is a telecommunications carrier that offers 800 service. Typically, a subscriber will contact its IXC or LEC to obtain a toll free number, and that carrier

guidelines have traditionally governed RespOrgs' actions and responsibilities.[26] Under those guidelines. RespOrgs have been able to reserve a limited quantity of toll free numbers at any one time.[27] and have been required to return toll free numbers to the spare pool when customers disconnect or cancel their service.[28]

8. The Commission has concluded that SMS access is a Title II service that must be offered under tariff.[29] The SMS database is administered by DSMI. a subsidiary of Bellcore. which. in turn. is wholly owned by the seven RBOCs. On November 21. 1996. however. Science Applications International Corporation (SAIC) announced that it has agreed to purchase Bellcore. The transaction is expected to be finalized in late 1997. and is dependent upon Bellcore's owners obtaining the required regulatory approvals. DSMI subcontracts management of the Number Administration and Service Center ("NASC"), which provides user support for the database. to Lockheed IMS. Southwestern Bell provides database hardware under contract.

9. The 800 SAC offers subscribers approximately 8 million toll free numbers. In June 1995, only 600,000 numbers remained unreserved or unassigned in the 800 database assignment pool. The weekly assignment of 800 numbers was three times the rate projected by the industry less than one year earlier.[30] If consumption had continued at this pace. the

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will generally act as the subscriber's RespOrg and 800 service provider. and will reserve a toll free number from the SMS database. Once the RespOrg enters specific subscriber routing information in the SMS database. the number is drawn from the spare pool of numbers in the database and assigned to the RespOrg. When the routing information has been loaded into the SCPs. the number is working and can be used to complete toll free calls.

[26] Industry Guidelines for 800 Number Administration, § 1 (June 8. 1995) ("Industry Guidelines").

[27] Id. at § 2.2.5.

[28] See n. 19 of the NPRM for additional RespOrg duties.

[29] See 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129 and Provision of 800 Services, CC Docket No. 86-10, Report and Order, FCC 96-392 (rel. October 28, 1996); Provision of Access for 800 Service, Order, 8 FCC Rcd 1423 (1993) (800 Proceeding Order); see also Bell Operating Companies' Tariff for the Service Management System, Tariff F.C.C. No. 1; 800 Data Base Access Tariffs, Order, 8 FCC Rcd 3242 (1993) ("Suspension Order"); 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation, 8 FCC Rcd 5132 (1993) ("Designation Order"); Order, 9 FCC Rcd 715 (1994) ("800 Cost Disclosure Order").

[30] Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau, FCC, to Michael Wade, President, DSMI (June 13, 1995) ("Wallman Letter II"). For a definition of the "assigned" status of a toll free number, see NPRM at 13697 and supra n.11.

800 database would have been depleted of unassigned numbers in July 1995.[31] Earlier in 1995, the industry had selected the interchangeable numbering plan area ("INPA")[32] 888 as the first relief toll free code.[33] Initially, the industry estimated that it could not modify the local exchange networks for use and portability of 888 toll free numbers until April 1, 1996. The industry estimated that the IXCs' networks could support the new code some time between mid-December 1995 and January 1996. Because the LECs were unable to advance the April 1996 deployment date, it appeared that, without modification of the number assignment process, there would be several months in which customers would be unable to obtain new toll free numbers from their chosen 800 service providers.

10. As a result, the industry asked the Common Carrier Bureau ("the Bureau") for assistance.[34] In response, the Bureau developed a plan to: (1) conserve remaining 800 numbers; (2) advance the April 1996 implementation date for the relief 888 toll free code to March 1, 1996; and (3) reclaim unused toll free numbers.[35] The Bureau determined that for six months, new or pending RespOrg applications would be suspended.[36] The Bureau limited the quantity of 800 numbers that could be assigned per week by allocating to each RespOrg an amount based on its historic consumption of 800 numbers and then modified the plan to respond to more detailed market share analyses, as well as information and suggestions

[31] As of April 5, 1997, 4177 numbers were unreserved or unassigned in the 800 database assignment pool.

[32] Traditionally, NPAs had either a "0" or a "1" as the middle digit. In January 1995, the industry introduced interchangeable NPAs ("INPAs") because there were no more available NPA codes of the 0/1 format. The introduction of INPAs permits the use of the digits "2" to "9" in the middle position of the NPA, resulting in area codes such as 234.

[33] The industry adopted the assignment of 888 as the first relief toll free code and reserved 877, 866, 855, 844, 833, and 822 as the subsequent toll free relief codes at the Industry Numbering Committee ("INC") meeting in February 1995. Relief toll free codes are defined as codes intended to supplement 800. That is, 888 and the subsequent toll free codes that will provide additional toll free numbers. See Industry Numbering Committee Issue Identification Form, dated March 3, 1995.

[34] See Letter from Donald F. Evans, Vice President of Federal Regulatory Affairs, MCI, to Kathleen M.H. Wallman, Chief, Common Carrier Bureau, FCC, dated May 26, 1995; Letter from Marie T. Breslin, Director of FCC Relations, Bell Atlantic, to Kathleen M.H. Wallman, Chief, Common Carrier Bureau, FCC (June 5, 1995); Options from 800 National Product Team, dated June 6, 1995.

[35] See Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau, FCC, to Michael Wade, President, DSMI (June 9, 1995) ("Wallman Letter I"); see also Wallman Letter II.

[36] Wallman Letter I. The Bureau lifted this suspension on December 14, 1995 by letter from Regina M. Keeney, Chief, Common Carrier Bureau, FCC, to Michael Wade, President, DSMI (December 7, 1995).

offered by the industry and interested parties. The Bureau also concluded that the aging process[37] and the time a number could be held in reserve status[38] should be shortened.

11. In October 1995, we initiated this rulemaking proceeding as a transition to an expanded set of toll free SACs, starting with 888 and eventually including the other INPAs reserved for this service.[39] This proceeding was also initiated to promote the efficient, fair, and orderly allocation and use of these limited numbering resources. The NPRM sought comment on issues pertaining to the provision and use of toll free numbers. We sought comment on whether to require RespOrgs to obtain an affirmative request from a subscriber before issuing a toll free number to that subscriber.[40] We asked whether we should establish an escrow account to retain deposits on toll free numbers pending assignment to subscribers,[41] and whether we should change the time toll free numbers may remain in various "statuses."[42] Other issues in the NPRM included the introduction of competition to toll free directory assistance[43] and the selection of a neutral third party other than DSMI to administer the toll free databases.[44] We sought comment on the scope and definition of "vanity" numbers and whether to permit holders of these toll free numbers a right of first refusal over like numbers in 888.[45] In addition, we sought comment on mandating the use of Personal Identification Numbers ("PINs"),[46] Standard Industrial Classification ("SIC") codes,[47] and gateway

[37] See n. 165, infra.

[38] See n. 163, infra.

[39] See supra n.33 for a discussion of toll free relief codes.

[40] NPRM at 13696.

[41] Id. at 13696-97.

[42] Id. at 13697-98.

[43] Id. at 13704.

[44] Id. at 13705.

[45] Id. at 13701-03.

[46] Id. at 13698.

[47] Id. at 13703-04.

technologies[48] to make the use of toll
free numbers more efficient and reduce consumer confusion. We also solicited comment on the best way to educate consumers about the introduction of new toll free SACs.[49]

12. The NPRM also solicited comment on the timing of the new toll free SAC introduction[50] and on whether the Commission should mandate a particular network architecture for routing calls to numbers in the new toll free SACs.[51] We sought comment on whether industry members or their subscribers were hoarding or warehousing toll free numbers, and what remedies were available to the Commission to stop such practices.[52] Finally, the NPRM requested comment on measures, such as "circuit breakers," i.e., thresholds that, when exceeded, would induce tighter controls over number consumption.[53]

13. On January 24, 1996, the Commission delegated authority to the Bureau to resolve the issues raised in the NPRM that were essential to the scheduled March 1, 1996, deployment of the 888 SAC.[54] On January 25, 1996, the Bureau adopted a Report and Order[55] that resolved several 888 implementation issues. First, the Bureau agreed with the SMS Number Administration Committee ("SNAC") that RespOrgs should poll their 800 subscribers to determine which numbers subscribers might want replicated in 888. RespOrgs were to send the list of these "protected" numbers to DSMI before February 2, 1996, and DSMI was to place the numbers in "unavailable" status[56] before February 9, 1996.[57] Second,

[48] Id. at 13704.

[49] Id. at 13705.

[50] Id. at 13699.

[51] Id. at 13700.

[52] Id. at 13701.

[53] Id. at 13705-06.

[54] See Delegation Order, 11 FCC Rcd 3045 (adopted January 24, 1996).

[55] Bureau Order, 11 FCC Rcd 2496 (adopted January 25, 1996).

[56] A number marked "unavailable" in the SMS database "is not available for assignment due to an unusual condition." Industry Guidelines at § 2.4.9.

the Bureau directed DSMI to place all numbers in the "888-555" NXX in "unavailable" status.[58] Third, the Bureau concluded that early reservation for all 888 numbers not in "unavailable" status would begin on February 10, 1996.[59] Fourth, the Bureau determined that a "first come, first served" reservation policy would best serve the public because it is simple, efficient, and less expensive to administer than other reservation schemes. Fifth, the Bureau concluded that the continuation of the 800 conservation plan, with modifications,[60] and the adoption of an 888 conservation plan, would serve the public interest.[61] Finally, the Bureau concluded 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.[62]

14. On May 10, 1996, the Bureau directed DSMI to end the 800 number conservation plan and to modify the 888 number conservation plan, which is still effective. Because the rules we are promulgating in this Second Report and Order and Further Notice of

[57] Bureau Order, CC Docket No. 95-155, DA 96-69, at 2504. On February 29, 1996, the Common Carrier Bureau directed DSMI to reclassify as "unavailable" any number not placed in this category that an 800 subscriber or its RespOrg subsequently identified as a number that should be placed in this category, if that number was not already in working status. Such a request had to be in writing and be received by DSMI before March 16, 1996. ("Keeney Letter II").

[58] Id. The issue of fostering a competitive market for toll free directory assistance service will be addressed in a subsequent Report and Order.

[59] Id.

[60] Id. at 2503-2504. The Bureau increased the total weekly allocation of 800 numbers from 29,000 to 73,000 numbers for a limited time. On February 18, 1996, the weekly allocation of 800 numbers returned to 29,000 numbers to ensure that 800 numbers would be available if toll free calls to 888 numbers were not possible from some local service areas. Id. The Bureau ended the 800 number conservation plan once it determined that 888 calls could be placed nationwide. See Keeney Letter.

[61] Bureau Order at 2505. The Bureau concluded that a weekly allocation of 120,000 888 numbers struck the appropriate balance among the needs of the RespOrgs, the technical limitations of the SMS database, and the capacity of the data links between the SMS and the regional SCPs. Each RespOrg's share of the weekly allocation was set on the same basis as its 800 allocation; each RespOrg multiplied its August allocation of 800 numbers by a factor of 4.0 to calculate its share of the weekly allocation of 888 numbers. Each RespOrg was permitted to receive a minimum of 200 888 numbers per week. Six thousand 888 numbers would be available each week for distribution to Canadian RespOrgs. The Bureau noted that it may modify the 888 conservation plan if toll free service quality decreases. Id. On May 10, 1996, the Bureau increased the minimum number of 888 numbers each RespOrg may receive to 300 888 numbers per week. See Keeney Letter.

[62] Id. at 2507.

Proposed Rulemaking are essentially conservation measures themselves, we direct DSMI to end the 888 number conservation plan when the rules we promulgate today become effective. We delegate authority to the Bureau, however, to take action to establish, modify, or monitor toll free number conservation plans in the future if exigent circumstances make such action necessary.

15. In February, 1996, Congress passed and the President signed into law the Telecommunications Act of 1996 (1996 Act).[63] The 1996 Act erects a "procompetitive, deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[64] Section 251(e)(1) of the Communications Act of 1934, as amended, provides that:

> The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.[65]

III. DISCUSSION

A. EFFICIENT USE OF TOLL FREE NUMBERS

1. In General

a. Background

16. The NPRM tentatively concluded that Section 1 and Title II of the Communications Act of 1934 ("Communications Act")[66] require us to ensure that toll free numbers are assigned and used in an efficient, fair, and orderly manner, and that the rapid

[63] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), to be codified at 47 U.S.C. § 151 *et. seq.*

[64] S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996).

[65] 47 U.S.C. § 251(e)(1).

[66] 47 U.S.C. §§ 151, 201 et seq.

depletion experienced with 800 numbers does not recur.[67] We sought comment on proposals to advance these goals. Concerned by reports of carriers assigning toll free numbers to subscribers without a request to do so, we questioned whether such assignments serve the public interest.[68]

b. Comments

17. Commenters generally support the Commission's efforts to ensure that toll free numbers are assigned and used efficiently,[69] and address the appropriate degree of regulation necessary to assure that toll free numbers are available for subscribers who need and want them. For example, SNET supports increased accountability by RespOrgs, but believes this should not be accomplished through burdensome Commission mandates and control.[70] PCIA maintains that additional regulation is unnecessary because an adequate implementation plan for new toll free service access codes should solve the problem of rapid and unanticipated depletion.[71] Some commenters assert that any procedures adopted to further the efficient use of toll free numbers should be included in the Industry Guidelines rather than Commission rules, because the guidelines can be modified more quickly to changing marketplace circumstances.[72] Sprint recommends that, if only one IXC has been assigning toll free numbers to subscribers who did not request them, we should require that carrier to demonstrate why we should permit it to continue this practice, rather than imposing additional requirements on all carriers.[73] Several carriers urge the Commission not to adopt rules that will favor larger providers of 800 service.[74]

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[67] NPRM at 13696.

[68] NPRM at 13696.

[69] See, e.g., 800 Users Coalition Comments at 3; NEXTLINK Comments at 1.

[70] SNET Comments at 6; see also USTA Comments at 2-4; AirTouch Comments at 3; Allnet Comments at i; ACTA Comments at 7-9; U S West Comments at 1-2.

[71] PCIA Comments at 4-5; see also LCI Comments at 2.

[72] See AT&T Comments at 5; see also SNET Comments at 6; PageNet Comments at 4-5; USTA Reply Comments at 3.

[73] Sprint Comments at 2.

[74] See, e.g., NEXTLINK Comments at 1; Qwest Comments at 2; and NTCA Comments at 2 .

c. **Discussion**

18. We conclude that § 1 and Title II of the Communications Act require the Commission to ensure the efficient, fair, and orderly allocation of toll free numbers. The principles contained in § 251(e)(1), which states that the Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis, also support this position.[75] We intend to rely on the industry, whenever possible, to solve implementation and operation issues associated with managing this numbering resource. However, we believe that more accountability by RespOrgs and subscribers is necessary in light of the rapid and unanticipated depletion of 800 numbers in 1995. Neither the implementation plan for new toll free codes nor the Industry Guidelines can assure such accountability. The Industry Guidelines do not address efficient allocation of toll free numbers. We conclude that Commission action, beyond the implementation plan for new toll free codes, is required.

2. **Warehousing**

a. **Background**

19. In the NPRM, we defined "warehousing" as RespOrgs' obtaining toll free numbers from the SMS database without having an identified subscriber for those reserved numbers. The NPRM noted that the voluntary Industry Guidelines limit the quantity of toll free numbers RespOrgs may reserve at any one time.[76] Before the introduction of the Bureau's 800 conservation measures, however, the depletion of 800 numbers led to concern that RespOrgs were warehousing toll free numbers, rather than immediately assigning them to subscribers.[77] The NPRM noted that when RespOrgs hold more toll free numbers than they need, the numbers cannot be distributed to RespOrgs with actual subscribers.[78] The NPRM sought comment on our tentative conclusion that warehousing toll free numbers is an unreasonable practice under Title II of the Communications Act and is, therefore, contrary to the public interest.[79]

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[75] See supra para. 15.

[76] NPRM at 13701.

[77] Id.

[78] Id. at n.69.

[79] Id.

20. The NPRM also sought comment on two reporting requirements designed to control warehousing. First, the NPRM sought comment on a requirement that RespOrgs certify: (1) that there is an identified subscriber agreeing to be billed for service associated with each toll free number a RespOrg requests from the database; and (2) that the RespOrg has assigned a number to an identified, billed subscriber before switching the number from reserved or assigned to working status.[80] Second, the NPRM sought comment on three proposals pertaining to affirmative requests for toll free service: (1) a requirement that each RespOrg or toll free service provider have an affirmative request from a subscriber before assigning a toll free number; (2) a requirement that records of affirmative requests be retained for two years; and (3) imposition of the affirmative request requirement through carrier tariffs or Commission rules.[81] We tentatively concluded that certification and affirmative request requirements serve the public interest by ensuring the fair and equitable distribution of scarce numbering resources.[82] The NPRM sought comment on the Commission's legal authority to enforce such recordkeeping rules.[83] Finally, the NPRM sought comment on what enforcement actions the Commission could take against a RespOrg warehousing numbers. The NPRM tentatively concluded that the Commission has the authority to penalize RespOrgs for violating the Commission's rules against warehousing. Suggested penalties included fines and de-certification as a RespOrg.[84]

b. Warehousing as an Unreasonable Practice

(1) Comments

21. Most commenters support the Commission's proposal to declare warehousing an unreasonable practice.[85] MCI asserts that there is no proof that "warehousing" or

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[80] For definitions of "reserved," "assigned," and "working" statuses, see supra note 11.

[81] NPRM at 13701.

[82] Id.

[83] NPRM at 13696.

[84] Id. at 13701.

[85] See, e.g., Bell Atlantic Comments at 6; Pacific Comments at 9; TRA Comments at 15; Allnet Comments at 8-9; CompTel Comments at 9-12 (warehousing is an unreasonable practice prohibited by Section 201 of the Communications Act); and AT&T Reply Comments at 5. See also ACRA Comments at 10 (unreasonable practice under Title II of the Communications Act).

"hoarding" of numbers has occurred.[86] LCI argues that the shortage of toll free numbers is a supply-side problem caused by legitimate demand for 800 numbers outstripping the supply before the industry was prepared to implement 888.[87] Vanity International maintains that warehousing would not be a problem if all toll free SACs were implemented as soon as possible.[88] Ameritech asserts that we should revise the definition of warehousing to allow RespOrgs to reserve numbers without having a customer.[89] Comptel contends that, while it supports reasonable limits on the quantity of numbers a RespOrg may reserve, "warehousing" should not be defined by these limits.[90]

(2) Discussion

22. Section 201(b) of the Communications Act provides that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."[91] In addition, § 201(b) states that "all practices" shall be just and reasonable and "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the Communications] Act."[92] Again, § 251(e) requires that the Commission ensure that numbers are made available on an equitable basis. We interpret these subsections to empower the Commission to ensure that toll free numbers, which are a scarce and valuable

[86] MCI Comments at 8.

[87] LCI Comments at 7; see also NIMA Comments at 6; PageNet Comments at 4.

[88] Vanity International Reply Comments at 3.

[89] Ameritech Comments at 27-28; see also MCI Comments at 2-3; Scherers Comments at 6.

[90] CompTel Comments at 10-11 (suggesting that "'[w]arehousing' shall mean the reservation and/or assignment of a telephone number from a numbering resource database with knowledge or with reason to know that no identifiable subscriber has affirmatively requested such number from the entity prior to reservation and/or assignment").

[91] 47 U.S.C. § 201(b).

[92] Id.; see also 47 U.S.C. § 205(a) ("the Commission is authorized and empowered to determine and prescribe . . . what . . . practice is or will be just, fair, and reasonable . . . and to make an order that the carrier or carriers shall . . . conform to and observe the . . . practice so prescribed").

national public resource,[93] are allocated in an equitable and orderly manner that serves the public interest. We conclude that warehousing, which is the practice whereby RespOrgs, either directly or indirectly through an affiliate, reserve toll free numbers from the SMS database without having identified subscribers for whom they are reserving those numbers, is an unreasonable practice under § 201(b) and also is inconsistent with our obligation under § 251(e)(1) to ensure that numbers are made available on an equitable basis. Permitting warehousing hastens the depletion of a given SAC and is, thus, contrary to the public interest. We disagree with Ameritech and other commenters that contend that we should permit RespOrgs to reserve numbers without having an actual subscriber. We believe such a practice may result in an anticompetitive allocation of numbers by unreasonably preventing RespOrgs and carriers from meeting the needs of subscribers desiring toll free numbers. We agree with MCI that the extent of warehousing has not been quantified, but conclude that specific rules designed to prevent warehousing will advance our overall goals for toll free number allocation. The certification requirement adopted below[94] is one method to help deter warehousing; we will continue to monitor the reservation of toll free numbers and take additional actions, if necessary, to discourage warehousing.

c. Certification and Affirmative Request Requirements

(1) Comments

23. Many commenters oppose a requirement that RespOrgs certify that: (1) they have an identified subscriber agreeing to be billed for service associated with each toll free number reserved from the database; and (2) they have an identified, billed subscriber before switching a number from reserved or assigned to working status. Numerous commenters opposing such a RespOrg certification requirement assert that it imposes an administrative burden without any commensurate benefits.[95] Others state that the proposed certification contains highly proprietary information.[96] Some subscribers to toll free services and several carriers support the certification on a quarterly basis.[97] NYNEX argues that certification

[93] See NANP Order, 11 FCC Rcd 2588 (adopted July 13, 1995).

[94] See infra para. 25.

[95] See, e.g., AT&T Comments at 20; Sprint Comments at 17; NYNEX Comments at 3; see also OMB Comments at 2.

[96] See, e.g., Pacific Comments at 9.

[97] See, e.g., MCI Comments at 9-10; GTE Comments at 3; and Weather Channel Comments at 4, n.5.

should only be imposed as a punitive measure for RespOrgs that warehouse toll free numbers.[98] NEXTLINK proposes, alternatively, that the RespOrg's act of reserving a number in the database serves as a certification that there is an identified customer agreeing to be billed for service associated with the toll free number. NEXTLINK argues that its proposal would further the Commission's objective without imposing unnecessary and costly bureaucratic requirements on RespOrgs.[99]

24. Most commenters support requiring an affirmative request from a subscriber for toll free service before a subscriber can be assigned a toll free number.[100] Numerous commenters also support requiring RespOrgs and toll free service providers to retain records of affirmative requests for toll free service.[101] Some commenters support a two year retention requirement,[102] while other commenters support retention for one year.[103] Several commenters, however, oppose a record retention requirement, alleging that it would impose an undue and unnecessary burden on RespOrgs and service providers.[104] Commenters are divided about whether the affirmative request requirement should be included in carriers' tariffs or adopted as part of the Commission's rules.[105] On the other hand, several commenters oppose

[98] See NYNEX Comments at 3.

[99] See NEXTLINK Comments at 6. See also Pacific Reply Comments at 10.

[100] See, e.g., AT&T Comments at 6; U S West Comments at 3-4; Scherers Comments at 4-5; Time Warner Comments at 2; Bass Pro Comments at 3 n.6; Service Merchandise Comments at 3; BellSouth Comments at 2, 4; SWBT Comments at 1-4; Unitel Comments at 1; ATC Comments at 2. But see OMB Comments at 1-2 (questioning whether a simple service or billing agreement would meet the Commission's requirements).

[101] See, e.g., BellSouth Comments at 2-3; Telemation Comments at 4, MFS Comments at 2-3.

[102] See, e.g., Telemation Comments at 4; BellSouth Comments at 2-3; CVS Comments at 1.

[103] See, e.g., CompTel Comments at 6 n.7; LDDS Comments at 3.

[104] See, e.g., NEXTLINK Comments at 2 (noting that such a requirement would needlessly increase overhead expenses, to which small providers are especially sensitive).

[105] Compare TRA Comments at 5 (supporting inclusion in Commission rules because it would be less burdensome to carriers and would carry greater weight than inclusion in tariffs) with Telco Planning Comments at 2 (supporting inclusion in both Commission rules and tariffs).

an affirmative request requirement.[106] Sprint recommends that documentation, such as a signed sales contract or adequately documented notes in the customer files maintained by the service provider, be acceptable authorization.[107] AirTouch maintains that an affirmative request requirement could compromise end users' proprietary information and supports, instead, periodic audits or subscriber verification from randomly selected RespOrgs.[108]

(2) Discussion

25. We conclude that requiring RespOrgs to submit a written statement certifying that they have not warehoused toll free numbers would create an unnecessary administrative burden on RespOrgs. We find, however, that a "certification" requirement is still necessary and we adopt NEXTLINK's proposal as our rule. Thus, the act of reserving a toll free number from the database serves as a certification that there is an identified subscriber agreeing to be billed for service associated with the toll free number. RespOrgs will not be permitted to obtain numbers from the database and then offer them to a variety of potential toll fee subscribers. RespOrgs, however, will be able to reserve several numbers for a particular toll free subscriber so that each subscriber can choose the number that best fits its needs before a number is assigned. We conclude that it is an unreasonable practice and is inconsistent with our obligation under § 251(e)(1) to ensure that numbers are made available on an equitable basis for RespOrgs to maintain a number in reserved status after a subscriber has indicated that it is not interested in obtaining that toll free number. So that all RespOrgs are aware of our conclusions on this subject, we direct that the following language be included in the SMS tariff:

> (1) [T]he Federal Communications Commission ("FCC") has concluded that warehousing, which the FCC defines as Responsible Organizations, either directly or indirectly through an affiliate, reserving toll free numbers from the SMS database without having an identified toll free subscriber for whom those numbers are being reserved, is an unreasonable practice under § 201(b) of the

[106] Allnet Comments at 2 (affirmative request requirement would impose a huge administrative burden on carriers to implement and on the Commission to monitor and police); see also CWI Comments at 2-3. See also MCI Comments at 2-3 (affirmative request requirement would unreasonably delay service installation and implementation).

[107] Sprint Comments at 2-3. Sprint also supports imposing any affirmative request requirement on the toll free service provider rather than the RespOrg, if they are separate entities, because only the service provider would have subscriber information. Id.

[108] AirTouch Comments at 9 n.21. But see SWBT Comments at 1-4 (supporting independent audits in conjunction with an affirmative request requirement); U S West Comments at 3-4 (same).

Communications Act and is inconsistent with our obligation under § 251(e)(1) of the Communications Act to ensure that numbers are made available on an equitable basis; and (2) if a Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved from the database, or if a Responsible Organization does not have an identified, billed toll free subscriber before switching a number from reserved or assigned to working status, then there is a rebuttable presumption that the Responsible Organization is warehousing numbers. Responsible Organizations that warehouse numbers will be subject to penalties.

26. Because we are adopting the certification requirement, we conclude that an affirmative request requirement is unnecessary. We want to encourage innovative business practices and avoid unreasonable burdens upon RespOrgs and toll free subscribers. The certification and affirmative request requirements appear to be duplicative because they would deter the same activity and require similar information, i.e., that there is an actual subscriber for a particular toll free number under a RespOrg's control. Imposing both requirements is also unnecessary because of the direct accountability that is imposed on RespOrgs by our finding that warehousing is an unreasonable practice under § 201(b) and is inconsistent with our obligation under § 251(e) of the Communications Act to ensure that numbers are made available on an equitable basis; the possibility of a penalty for taking action that violates the Communications Act should further deter warehousing. We note that, although some commenters support a certification requirement while others support an affirmative request requirement, the certification requirement we are adopting should satisfy both groups. Again, the information necessary to satisfy each requirement is duplicative; the certification requirement will ensure that the information is available earlier rather than later in the process (i.e. at the reservation stage rather than at the assigned stage). We note that, since it is possible for a number to be taken from "reserved" status and placed directly in "working" status, without ever being in "assigned" status, the certification requirement ensures that the information will be available for all numbers, while adoption of the affirmative request requirement alone may have allowed parties to avoid the affirmative request requirement by bypassing the assignment stage. Finally, by making the act of reserving a number serve as the necessary certification, and not requiring an additional written certification, we address the comments of parties concerned about administrative burdens being imposed on RespOrgs through either a certification requirement or an affirmative request requirement.

e. Penalties for Warehousing

(1) Comments

27. Commenters generally support the proposal that we should penalize RespOrgs that warehouse toll free numbers.[109] While some commenters argue that forfeiting RespOrg status is too extreme a measure,[110] many favor decertification for "habitual offenders."[111] Many commenters contend that either loss of SMS access privileges or a decrease in the RespOrg's allowable "take rate" is reasonable because they both force RespOrgs to use the warehoused numbers.[112] Nearly all commenters support a monetary fine and assert that the Commission has the legal authority to impose monetary penalties.[113] Ameritech argues that the Commission could establish penalties, such as monetary fines and the temporary reduction of the quantity of numbers a RespOrg can reserve, for RespOrgs that violate the affirmative request rule.[114] AT&T contends that the Commission has authority under the Communications Act to issue cease and desist orders,[115] to initiate inquiries on its own motion,[116] to penalize violations of its rules,[117] and to impose forfeitures.[118] BellSouth asserts that the Commission can hold a common carrier accountable for its conduct in a formal complaint proceeding.[119] CWI states that all RespOrgs should be penalized for warehousing, not just those that are

[109] See, e.g., Promoline Comments at 6; Qwest Comments at 5-6; NYNEX Comments at 3. But see Pacific Reply Comments at 6 (recommending that the Commission not enumerate penalties until the 800 audit is completed).

[110] See LDDS Comments at 11; Qwest Comments at 6.

[111] See, e.g., Ameritech Comments at 27-28; TRA Comments at 15; Promoline Comments at 6.

[112] See, e.g., NYNEX Comments at 3; MFS Comments at 9; BellSouth Comments at 14.

[113] See, e.g., AT&T Comments at 22; Ameritech Comments at 27-28; Allnet Comments at 8-9. Allnet asserts that the Commission has the authority to impose damages under 47 U.S.C. § 208.

[114] Ameritech Comments at 3-4. Ameritech believes that the Commission may enforce these penalties against all RespOrgs, including non-common carriers. Id.

[115] AT&T Comments at 21, citing 47 U.S.C. § 312(b).

[116] Id., citing 47 U.S.C. § 403.

[117] Id., citing 47 U.S.C. § 502.

[118] Id., citing 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. See also Allnet Comments at 8-8 (supporting Commission's authority to impose forfeitures); Enterprise Comments at 5 (same).

[119] BellSouth Comments at 3-4; see 47 U.S.C. § 208.

common carriers subject to Title II obligations.[120] Allnet, however, maintains that because there is a question of the Commission's jurisdiction over non-common carrier RespOrgs, the Commission should allow only common carriers to be RespOrgs.[121] U S West maintains that fines combined with audits and a temporary loss of RespOrg status are effective deterrents because, to maximize profits, companies will continue to warehouse numbers when a fine is small compared to the potential revenue gained from warehousing.[122]

28. AT&T argues that the SMS administrator can and should be authorized to reclaim toll free numbers that remain in a particular status (e.g., reserved) for a period longer than the Industry Guidelines permit. AT&T further asserts that when the SMS Administrator finds that a significant percentage of a RespOrg's "reserved" numbers are being automatically recaptured after 45 days, it should issue a warning letter to the RespOrg. In the absence of an appropriate justification for the numbers being recaptured in 45 days, AT&T proposes that a RespOrg's reservation cap be reduced commensurate with the percentage of numbers that had been reverting to the spare pool.[123]

(2) Discussion

29. We conclude that the Commission's exclusive jurisdiction over the portions of the North American Numbering Plan that pertain to the United States, found at § 251(e)(1) of the Communications Act, as amended, authorizes the Commission to penalize RespOrgs that warehouse toll free numbers. We may impose a forfeiture penalty under § 503(b).[124] In addition, if a person violates a provision of the Communications Act or a rule or regulation issued by the Commission under authority of the Communications Act, the Commission can refer the matter to the Department of Justice to determine whether a fine, imprisonment, or

[120] CWI Comments at 11-12.

[121] Allnet Comments at 8-9.

[122] See U S West Comments at 18.

[123] See AT&T Comments at 8.

[124] 47 U.S.C. § 503(b) ("[a]ny person who is determined by the Commission . . . to have . . . willfully or repeatedly failed to comply with any . . . rule, regulation, or order issued by the Commission under this Act . . . shall be liable to the United States for a forfeiture penalty").

both are warranted under § 501 or § 502 of the Communications Act.[125] We also may limit any RespOrg's allocation of toll free numbers or possibly decertify it as a RespOrg under § 251(e)(1) or § 4(i).[126] In addition, RespOrgs that falsely indicate that they have identified subscribers for particular numbers may be liable for false statements under Title 18 of the United States Code.[127] We direct DSMI, and any successor toll free administrator, to monitor reserved numbers that are being automatically recaptured after 45 days and to submit regular reports to the Common Carrier Bureau, indicating which RespOrgs repeatedly reserve toll free numbers without having an identified subscriber.[128]

3. Ownership of Numbers

a. Background

30. The NPRM stated that the Commission has characterized telephone numbers as a public resource that are not the property of the carriers.[129] Further, the Commission has noted that "carriers do not 'own' codes or numbers, but rather administer their distribution for the efficient operation of the public switched telephone network."[130] The NPRM noted that Bellcore, the current administrator of the North American Numbering Plan ("NANP"), as well as the current Industry Guidelines and assignment guidelines for 555 NXX codes, concur with this assessment.[131] The NPRM stated that some subscribers might consider toll free numbers to be their property, although tariffs and rules on file with state public service commissions

[125] See 47 U.S.C. §§ 4 (i), 501 and 502.

[126] Id. at § 4(i) ("[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions").

[127] 18 U.S.C. § 1001.

[128] See infra at para. 50.

[129] NPRM at 13702 (citing NANP Order, 11 FCC Rcd 2588 (adopted July 13, 1995)).

[130] Id. (citing The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 Rad. Reg. (P&F) 1275, 1284 (1986)).

[131] NPRM at 13702.

routinely state that subscribers do not own their telephone numbers.[132]

b. Comments

31. Most commenters agree that numbers are a public resource and are not the property of carriers, RespOrgs, or subscribers.[133] LCI asserts that, when 800 subscribers selected and invested in their numbers, they did so with an understanding that they did not have a vested interest in retaining that 800 number or in transferring it into another toll free code, e.g. 888.[134] In contrast, Dial 800 maintains that the Commission's decision to make toll free numbers portable requires a "sound policy" decision granting some form of ownership in toll free numbers.[135]

c. Discussion

32. We find that there is a "legitimate governmental interest or rational basis" for declaring that toll free numbers are a public resource and that we must ensure that telephone numbers are allocated efficiently and fairly.[136] Telephone numbers are essential to routing calls on the public switched network, and the Commission is empowered to ensure that the public has access to telephone numbers.[137] We will not alter our prior holdings regarding ownership interests in telephone numbers.

4. Hoarding and Brokering

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[132] Id. at 13702-03 (citing Burris v. South Central Telephone Company, 540 F. Supp. 905, 907 (S.D. Miss. 1982)). The NPRM also notes that certain carriers have drafted tariffs granting exclusive property interests in blocks of telephone numbers to those carriers, but no court has yet ruled on the legality of those tariffs. Id.

[133] See, e.g., Unitel Comments at 3-4; GTE Comments at 9; SNET Comments at 5; Allnet Comments at 9-10 n.8 (since the Industry Guidelines specifically state there is no ownership interest in numbers, subscribers take toll free service under those terms). Pacific Reply Comments at 6-7.

[134] LCI Comments at 8.

[135] Dial 800 Reply Comments at 6.

[136] Cf., Mark Olson Comments at 1-4.

[137] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) to be codified at 47 U.S.C. § 251(e)(1), ("[t]he Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis").