U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

March 17, 1998

By Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW Suite 222
Washington, DC 20554

RE: Notice of *Ex parte* Presentation in a Non-Restricted Proceeding
In re Toll Free Service Access Codes (CC Dkt. No. 95-155).

Dear Ms. Salas:

The Office of Advocacy, U.S. Small Business Administration, by its undersigned representative and in accordance with Section 1.1206 of the Commission's rules, hereby respectfully submits an original and one copy of the enclosed written *ex parte* presentation regarding the above-referenced proceeding. This written *ex parte* is a collaborative effort between the Office of Advocacy, Eric Fishman, Esq. of Fletcher, Heald & Hildreth P.L.C.; Robert J. Keller, Esq. of the Law Office of Robert J. Keller, P.C.; and Steven White, President of New England 800 Company. The purpose of this presentation is not to endorse any given significant alternative proposed by interested parties but to illustrate the issues still to be resolved that have a significant economic impact on small entities that are affected by the Commission's decisions.

This written presentation was also discussed in a meeting with Paul Gallant, Legal Advisor to Commissioner Gloria Tristani on March 17, 1998. Present at this meeting were the undersigned S. Jenell Trigg; Eric Fishman, Esq. of Fletcher, Heald & Hildreth P.L.C.; Robert J. Keller, Esq. of the Law Office of Robert J. Keller, P.C.; and Steven White, President of New England 800 Company. Issues set forth in this presentation were also discussed by S. Jenell Trigg in separate telephone conversations with Tom Power, Legal Advisor to Chairman William Kennard and Kevin Martin, Legal Advisor to Commissioner Harold Furchtgott-Roth on March 16, 1998.

Advocacy also provides notification of an *ex parte* telephone conversation between S. Jenell Trigg and Anna Gomez, Deputy Chief, Common Carrier Bureau - Network Services Division on Friday, March 13, 1998. This discussion was consistent with the attached written presentation and with Advocacy's comments previously on the record in this proceeding.

To the extent that a waiver is necessary for this late filing, we respectfully request the Commission's approval. Thank you for your assistance in this matter. Please call with any questions.

Very truly yours,

S. Jenell Trigg, Esq.
Assistant Chief Counsel for
Telecommunications

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Enclosure

cc: The Honorable William E. Kennard
The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Harold Furchtgott-Roth
The Honorable Gloria Tristani
Mr. Tom Power, Legal Advisor to Chairman Kennard
Mr. Kevin Martin, Legal Advisor to Commissioner Furchtgott-Roth
Mr. Paul Gallant, Legal Advisor to Commissioner Tristani
Ms. Anna Gomez, Deputy Chief/CCB-NSD

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

Before the
FEDERAL COMMUNICATIONS COMMISISON
Washington, DC 20554

In the Matter of	)	
	)	
TOLL FREE SERVICE ACCESS CODES	)	CC Docket. No. 95-155
	)	

Written Ex Parte Presentation
Adverse Economic Impact on Small Businesses Resulting From Proposed April 5 Implementation of 877

The following are major issues concerning the rollout of 877 toll free access codes and the Federal Communications Commission's ("Commission" or "FCC") pending rulemaking on the replication of vanity numbers.[1] These proceedings have a significant economic impact on small entities that are subject to the rules: small RespOrgs, small carriers, and small business subscribers.

The Commission's primary objective in this proceeding is to ensure that toll free numbers are allocated on a fair, equitable and orderly basis. The undersigned parties to this *ex parte* submission assert that the implementation of 877 numbers on the scheduled date of April 5, 1998, will not meet the Commission's overall objectives.

I. PROCEDURAL ISSUES

1. The implementation of 877 must be after the FCC's resolution of final rules for the replication of "vanity numbers" and after reconsideration of the *Second Report and Order* which unlawfully prohibits the sale of numbers by private parties.[2] Proceeding with a rollout of 877 prior to resolving these issues will:

* have a significant detrimental economic impact on small RespOrg/carriers and small business subscribers;
* cause permanent & irreparable harm to small business subscribers; and
* prevent small businesses from mitigating harm by recovering a lost number via private transaction (secondary market). The FCC's rules currently prohibit these transactions.

2. The Commission needs adequate time to analyze all significant alternatives regarding vanity number replication and the impact of its rules on small entities in compliance with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. § 601 et seq.

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[1] *In re* Toll Free Service Access Codes, CC Docket No. 95-155, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11162 (1997).

[2] *See* Comments of the Office of Advocacy, U.S. Small Business Administration, Dec. 12, 1997 (asserting that the *Second Report and Order* violates the Administrative Procedure Act, the Regulatory Flexibility Act, as amended, and raises serious constitutional issues)

FEDERAL RECYCLING PROGRAM PRINTED ON RECYCLED PAPER

II. SUBSTANTIVE ISSUES

1. THE EXHAUSTION OF NUMBERS HAS BEEN EXAGGERATED

There is no immediate threat of exhaustion of toll free numbers. This negates need for April 5th roll out.

* Enough numbers at current rate of depletion to last 100+ days.
* Using SNAC projections, depletion will not occur until at least 60 days.
* Delay in implementation of 877 is more than reasonable given unresolved issues in administration and replication of toll free numbers.

2. FIRST-COME, FIRST-SERVED IS A MYTH

* System is not technically prepared to give small RespOrgs equal chance.
* SMS not ready for immediate 2K numbers for new/small RespOrgs.
* Many small RespOrgs access SMS database by dial-up circuits (larger RespOrgs have direct connections); however for 700+ users of dial-up - there are only 240 data-modem ports. Given start of implementation of 877, 66% of dial-up users will get a busy signal!
* Priority for entry of subscriber reservations on April 5 into SMS database will be made by business volume of subscriber or importance of subscriber's account to the carrier/RespOrg.

3. DISCRIMINATORY PRACTICES IN THE INDUSTRY AGAINST SMALL ENTITIES

* Conflict of interest assures large RespOrgs' carriers unfair advantage over small business subscribers.
* Large carriers are not merely RespOrgs, but also consumers of numbers themselves.
* Large carriers are also influential members of SNAC with self-interests in roll out.
* All carriers have unfettered opportunity to terminate a subscriber's toll free account if subscriber is presumed to be a hoarder or broker given FCC's rules set forth in *Second Report and Order*.

III. RECOMMENDED SOLUTIONS

1. Issue final rules on "vanity number" replication prior to implementation of 877.

2. Delay the implementation of 877 by at least 30 days to provide FCC additional time to fully explore and analyze the significant alternatives on the record that can ease the burden on small entities and level the playing field. Delay also provides time for industry to resolve the technical problems with data-modem ports. (See below for significant alternatives.)

3. Honor the replication of 888 and release those numbers to subscribers to avoid chaos in the marketplace, unfair trade and trademark issues. These subscribers relied on replication opportunity in good faith.

IV. SIGNIFICANT ALTERNATIVES BEFORE THE FCC THAT ARE CONSISTENT WITH COMMISSION'S OBJECTIVES:[3]

1. "Enterprise solution" segregates usage into two types, enterprise or non-enterprise. Allocation of numbers commencing with 877 would be according to usage. Written *Ex parte* Presentation and Motion to Defer 877 Implementation, ResponseTrak Call Centers, Feb. 24, 1998.

* Separates those who need high recognition numbers from those that do not.

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[3] This is not an exclusive list. There may be additional significant alternatives on the record that will also lessen the economic impact on small businesses. The Commission is required to include a "statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected." 5 U.S.C. § 604(a)(5).

* Protects businesses, especially small businesses from confusion caused by duplicate toll free numbers.
* Resolves "vanity number" and "replication" issues.
* Eliminates exhaustion of high recognition toll free numbers for business.

2. If necessary to implement 877 before permanent resolution of issues, undertake temporary implementation. Two Options:

a) Allocate only those numbers with 0s and 1s.

* Mathematically, 60% of each exchange does not spell anything, thus lowers demand because not an alpha numeric vanity number. Total number combinations per NXX= 10,000 (10x10x10x10). Total number combination which do not include either a zero or a one =4,096 (8x8x8x8).

b) Allocate 877 to only cellular, pagers, and residential users.

* Allocation to a less commercial use negates chance for a competitor acquiring a vanity number for trade purposes and lessens burden on remaining 800 and 888 numbers if all cellular, pagers and residential numbers were to come from 877.

3. Eighteen month prohibition from the opening of the 877 SAC for an allocation of numbers for a RespOrgs' own account, or any entity affiliated with it, or for the account of any of its subscribers for which the RespOrg, affiliate, or subscriber holds or has set-aside the 800 or 888 replica. Letter from Robert J. Keller to A. Richard Metzger, Jr., Common Carrier Bureau Chief, FCC, Mar. 13, 1998, at 4.

* Eliminates opportunity for any carrier/RespOrg to discriminate in favor of its own numbers and its subscriber's numbers

Respectfully Submitted:

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