

RECEIVED

JUN 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

REPLY OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI"), by its attorneys, submits these reply comments supporting the petitions for reconsideration of the Commission's *Fourth Report and Order* in this proceeding.¹

The petitions and comments are virtually unanimous in their view, as MCI has argued, that a first-come, first-serve assignment process for "vanity" toll-free numbers is inequitable, inefficient and contrary to the public interest. The Commission instead should exempt vanity toll-free numbers—and, at the very least, vanity toll-free numbers used for access purposes—by reinstating a right of first refusal for these number holders. In order to avoid further injury to holders of vanity numbers arising from its new policy, the Commission should also immediately suspend already activated vanity numbers in the 877 toll-free code, such as 1-877-COLLECT, until these important issues are finally resolved.

INTRODUCTION

There is overwhelming support for Commission reconsideration of the new first-come, first-serve assignment policy for vanity numbers in toll-free area codes announced by the *Fourth Report and Order*. Like MCI's, all four of the reconsideration petitions challenge the Commis-

¹ *Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, CC Docket 95-155, FCC 98-48 (rel. March 31, 1998), 63 FR 16440 (Apr. 3, 1998) ("Fourth Report and Order").

No. of Copies rec'd
List A B C D E

0+12

sion's decision to assign numbers in future toll-free service access codes ("SACs"), including the recently opened 877 code, on a first-come, first-serve basis.² Each of the petitioners agrees with MCI that the Commission must reconsider its rejection of a right of first refusal for assignment of vanity numbers because a first-come, first-serve policy does not serve the public interest. MCI at 4-5; DMA at 11; TFUC at 2; SBA at 4-5. In its opening comments, ICB likewise supports extending a right of first refusal to future toll-free codes. ICB at 7. Alone among the parties, Sprint opposes a right of first refusal, but fails to address the policy or legal merits of the issues raised by the petitions. Sprint at 5-6.

As MCI and other petitioners highlight, a first-come, first-served approach to assignment of toll-free vanity numbers fails to meet the Commission's own numbering policy objectives, is contrary to industry experience and FCC precedent in setting aside vanity numbers within the 888 toll-free code, and discriminates against existing number holders. The new policy fails to recognize important legal and market differences between toll-free access codes and subscriber 800 codes and, as noted by Commissioner Furchtgott-Roth in his dissenting opinion, will jeopardize substantial previous investments in toll-free numbers.³ The lone opposition of Sprint merely parrots the language of the *Fourth Report and Order* without analyzing the inconsistencies of the Commission's policies on the important issues raised by MCI's petition.

In light of this virtually unanimous opposition to the Commission's new toll-free assignment policy, the Commission should direct that toll-free assignments will continue to be con-

² In addition to MCI's Petition for Partial Reconsideration, petitions for reconsideration were filed by The Direct marketing Association ("DMA"), the Toll Free Users' Coalition ("TFUC"), and the Office of Advocacy of the United States Small Business Administration ("SBA"). Comments on the petitions were subsequently filed by ICB, Inc. and Sprint Communications Co.

³ *Fourth Report and Order*, Dissenting Statement of Commissioner Harold Furchtgott-Roth.

ducted pursuant to a right of first refusal for vanity numbers. And as MCI demonstrated in its petition, at a minimum the Commission should modify the *Fourth Report and Order* to adopt a right of first refusal approach to vanity numbers that are used as toll-free access numbers, such as 1-800-COLLECT and its toll-free progeny, in order to safeguard the significant marketing and good will investments carriers have made in these consumer-friendly access mechanisms.

DISCUSSION

I. THE COMMISSION SHOULD REINSTATE A RIGHT OF FIRST REFUSAL FOR ASSIGNMENT OF VANITY TOLL-FREE NUMBERS

Each of the petitioners, including MCI, voices fundamental objections to a first-come, first-serve allocation for “vanity” toll-free numbers and urges the Commission to adopt a right of first refusal for all toll-free vanity numbers. MCI at 4-5; DMA at 11; TFUC at 2; SBA at 4-5. As ICB explained, “an across-the-board right of first refusal is necessary to protect existing holders of 800 and 888 numbers from encroachment and dilution of their business investment when new toll-free codes are opened.” ICB at 7; *accord* DMA at 9, 11, TFUC at 2-4; SBA at 4, 9-11.

Sprint’s opposition never comes to grips with the serious issues raised by the Commission’s new policy. Nor does Sprint even address MCI’s argument that at a minimum, the Commission should adopt a right of first refusal method for toll-free vanity access numbers, such as 1-800-COLLECT and its successors. As MCI observed, carriers have used toll-free vanity access numbers to offer new telecommunications access services and have made multi-million dollar investments in brand recognition, goodwill and end user dialing patterns. MCI at 4-5. Sprint’s suggestion that trademark laws (in combination with brokering and hoarding enforcement) are sufficient to protect these interests entirely misses petitioners’ point. Sprint at 3. There is simply no legitimate argument that allowing other carriers to piggyback on the access

800 investment of MCI in 1-800-COLLECT is an equitable method of assigning these commercially valuable numbering resources. MCI at 4.

In contrast, the *Fourth Report and Order*'s first-come, first-serve approach to the assignment of vanity numbers used for access code calls jeopardizes the procompetitive role of toll-free access codes, such as MCI's 1-800-COLLECT service, developed following 1990 enactment of the Telephone Operator Consumer Services Improvement Act ("TOCSIA"). MCI at 3. The Commission should not now endanger these competitive alternatives by deterring carriers from investing in access number development, as warned by Commissioner Furchtgott-Roth.⁴ MCI at 3.

A right of first refusal policy for toll-free vanity access numbers is therefore not only consistent with the Commission's past policies treating such numbers distinctly, but would greatly reduce any efficiency or fairness concerns associated with this approach. Such an approach would also be entirely consistent with the limited right of first refusal exception the Commission applied to 888 vanity numbers. MCI at 2-3. To ensure that carrier rights are not irreparably prejudiced, therefore, the Commission should immediately suspend any further activation of vanity numbers in the 877 toll-free code, much as it did in the case of 888 vanity numbers. *Id.* at 4-5. Existing vanity numbers that have already been activated in the 877 code, such as 1-877-COLLECT, should be deactivated, reallocated and reassigned as necessary in accordance with the Commission's decision on reconsideration.⁵

⁴ *Fourth Report and Order*, Dissenting Statement of Commissioner Harold Furchtgott-Roth.

⁵ Interim relief of this sort, as the Commission ordered in opening the 888 toll-free code, is the only possible vehicle for permitting an orderly disposition of the pending reconsideration petitions without irreparably prejudicing the interests of vanity toll-free number holders, like MCI, that were unable to secure (or to decide affirmatively to renounce their right to) vanity numbers in the 877 SAC that correspond with numbers already in use in the 800 and 888 toll-free codes.

II. A FIRST-COME, FIRST-SERVED ASSIGNMENT PROCESS UNDERMINES THE COMMISSION'S NUMBERING POLICY OBJECTIVES

Sprint contends that the purportedly “unique circumstances” surrounding the 888 code do not pertain to the 877 and future toll-free SACs, thus justifying the Commission’s departure from its previous right of first refusal policy. Sprint at 5-6. This is plainly incorrect. As MCI and other petitioners and commenters noted, a first-come, first-serve approach to assignment of toll-free vanity numbers fails to achieve the Commission’s numbering policy objectives that toll-free number allocation should be orderly, efficient and fair.⁶ MCI at 5; TFUC at 4-5; DMA at 3, 4; SBA at 4-9; ICB at 1-2.

As MCI explained in its petition, the Commission’s concern about multiple subscribers with competing rights of first refusal is easily addressed by giving a right of first refusal to parties only if they hold and use the vanity number in the immediately preceding toll-free code. MCI at 5-6; *accord* DMA at 7-8. As to competing claims, a right of first refusal most efficiently and appropriately disposes of such claims in the first instance, obviating the necessity for longer disputes, greater uncertainty and substantial litigation that could tie up number resources and lead to inefficient number resource usage. MCI at 6; DMA at 10-11. In fact, the only “unique circumstances” presented are for the 877 code, which is the first toll-free SAC that the Commission has permitted to be opened without any protection for existing vanity number holders, thus justifying an immediate suspension of vanity numbers (such as those claimed by MCI) that have already been assigned without the procedural protections accorded under a right of first refusal.⁷

⁶ *Fourth Report and Order* ¶ 12.

⁷ If the Commission permits the 877 code to remain in place without any remedy for 800 and 888 vanity number holders, it would plainly be inequitable to reinstate a right of first refusal triggered by use of an 877 vanity number, because many such numbers have already been assigned and activated without regard to usage in prior toll-free SACs. Indeed, because the Commission decided to change its policy as to vanity numbers *for the first time* with the 877 SAC, but without allowing adequate time for resolving reconsideration petitions, the *only* competing claims that are of any real consequence are those between parties who held vanity numbers in the 888 code that, as a result
(Footnote continued on next page)

Sprint asserts, without any factual support, that a right of first refusal will accelerate exhaust of toll-free SACs. Sprint at 5. All other parties, however, overwhelmingly conclude to the contrary. MCI at 8; TFUC at 5; SBA at v, 2-3; DMA at 5-6, 8-10; ICB at 7. A system similar to what was used for 888 numbers, including a right of first refusal for vanity numbers, would necessarily lead to a more orderly assignment process by eliminating the disarray that arises from number speculators (and existing vanity number users trying to protect their investments) attempting to secure existing vanity numbers. MCI at 6; DMA at 4-5. Under a right of first refusal approach, the supply of toll-free numbers is likely to last well into the next decade. MCI at 7-8. As MCI noted, any potential efficiencies of a first-come, first-served allocation for toll-free numbers are wholly speculative. MCI at 8; TFUC at 3-4; DMA at 6. Indeed, it is likely that over time increasingly fewer vanity numbers would be set aside, thereby reducing any efficiency differences between a right of first refusal approach and a first-come, first-served approach. MCI at 8; TFUC at 4; DMA at 6.

As DMA emphasized, the first-come first-serve policy “invites and rewards warehousing hoarding and brokering,” such that these will be quickly allocated and the net effect of the first-come, first-served and right of first refusal approaches will largely be the same. DMA at 3; MCI at 8. Perhaps more importantly, not only is it *unfair*, but is manifestly *unjust* to permit a third-party speculator to obtain a vanity number from an existing user of that number merely because the speculator gets lucky during a “mad rush” assignment procedure. MCI at 9; TFUC at 3-4; DMA at 4. And in the final analysis, whatever marginal, short-term efficiencies may be gained

of the accelerated opening of 877, have been left without a remedy under the Commission’s new rules. An immediate suspension of activated 877 numbers as to which claims have already been made (for instance, 1-877-COLLECT and 1-877-SUNDAYS, both of which MCI was unable to secure under the Commission’s new policy) is therefore necessary.

from a first-come first-served policy for vanity toll-free numbers are plainly outweighed by the Commission's overriding interest in ensuring that assignment of commercially important toll-free numbers, like all other numbering resources, is fair. The new policy, adopted for the first time in the Commission's *Fourth Report and Order*, fails this basic test.

CONCLUSION

For all these reasons, and for these stated in MCI's petition, the Commission should immediately suspend further activation of vanity numbers within the 877 toll-free code and reinstate a right of first refusal approach for vanity number assignment within all toll-free SACs. At the very least, the Commission should adopt a right of first refusal approach for the assignment of vanity toll-free numbers used for access purposes. Existing vanity numbers that have already been activated in the 877 code, such as 1-877-COLLECT, should be deactivated, reallocated and reassigned as necessary in accordance with the Commission's decision on reconsideration in this proceeding.

Respectfully submitted,

By: 

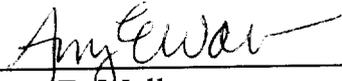
Glenn B. Manishin
Christy C. Kunin
Blumenfeld & Cohen—Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
202.955.6300

Counsel for MCI Telecommunications Corp.

Dated: June 15, 1998

CERTIFICATE OF SERVICE

I, Amy E. Wallace, do hereby certify on this 15th day of June, 1998, that I have served a copy of the foregoing document via messenger and U.S. Mail, postage prepaid, to the parties below:



Amy E. Wallace

William E. Kennard
Chairman
FCC
1919 M Street, N.W.
Room 814
Washington, DC 20554

Susan Ness
Commissioner
FCC
1919 M Street, N.W.
Room 832
Washington, DC 20554

Michael Powell
Commissioner
FCC
1919 M Street, N.W.
Room 844
Washington, DC 20554

Harold Furchtgott-Roth
Commissioner
FCC
1919 M Street, N.W.
Room 802
Washington, DC 20554

Gloria Tristani
Commissioner
FCC
1919 M Street, N.W.
Room 826
Washington, DC 20554

Richard Metzger
Chief, Common Carrier Bureau
FCC
1919 M Street, N.W.
Room 500
Washington, DC 20554

Geraldine Matisse
FCC
Network Services Division-CCB
2000 M Street, N.W.
Room 235
Washington, DC 20554

John Muleta
FCC
Common Carrier Bureau
1919 M Street, N.W.
Room 500
Washington, DC 20554

Marianne Gordon
FCC
Network Services Division-CCB
2000 M Street, N.W.
Room 235
Washington, DC 20554

Patrick Forster
FCC
Network Services Division-CCB
2000 M Street, N.W.
Room 246
Washington, DC 20554

Robin Smolen
FCC
2000 M Street, N.W.
Room 290
Washington, DC 20554

Gregory M. Scott
Colier, Shannon, Rill & Scott
3050 K Street, N.W.
Suite 400
Washington, DC 20007

Jere W. Glover, Esq.
Chief Counsel for Advocacy
Office of Advocacy
U.S. Small Business Administration
409 Third Street, S.W.
Suite 7800
Washington, DC 20416

Leon M. Kestenbaum
Norina T. Moy
Sprint Communications Co., L.P.
1850 M Street, N.W.
Suite 1110
Washington, DC 20036

Andre Rausch
FCC
Network Services Division-CCB
2000 M Street, N.W.
Suite 246
Washington, DC 20554

ITS
1231 20th Street, N.W.
Washington, DC 20036

Ian D. Volner
Heather L. McDowell
Venable, Baetjer, Howard
& Civiletti, LLP
1201 New York Avenue, N.W.
Suite 1000
Washington, DC 20005-3917

Edwin N. Lavergne
J. Thomas Nolan
Ginsburg, Feldman and Bress, Chtd.
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Robert J. Keller
Law Office of Robert J. Keller, P.C.
4200 Wisconsin Avenue, N.W.
Suite 106 - Box 233
Washington, DC 20016-2157

S. Jenell Trigg, Esq.
Assistant Chief Counsel for
Telecommunications
Office of Advocacy
U.S. Small Business Administration
409 Third Street, S.W.
Suite 7800
Washington, DC 20416