

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013)	MD Docket No. 13-140
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2012)	MD Docket No. 12-201
)	

REPLY COMMENTS OF HYPERCUBE TELECOM, LLC

HyperCube Telecom, LLC (“HyperCube”), by its attorneys, hereby respectfully submits these reply comments in response to the *Further Notice of Proposed Rulemaking* (“*Further Notice*”) released by the Federal Communications Commission (“FCC” or the “Commission”) seeking comment on potential enforcement procedures for non-payment of the newly-adopted regulatory fees for toll free numbers (“TFNs”) in the above-captioned proceeding.¹ HyperCube is concerned that the proposed enforcement procedures – “revocation of numbers or decertifying a Responsible Organization (“RespOrg”)”² – will inadvertently harm the customers of the RespOrgs, customers who are not the intended targets of these mechanisms. HyperCube

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal year 2014, Assessment and Collection of Regulatory Fees for Fiscal year 2013, Procedures for Assessment and Collection of Regulatory Fees*, MD Docket No. 14-92, MD Docket No. 13-140, MD Docket No. 12-201, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-129 (rel. Aug. 29, 2014). Hereinafter, the Report and Order portion of the item will be referred to as “*Report and Order*” and the Further Notice of Proposed Rulemaking portion of the item will be referred to as “*Further Notice*”.

² *Further Notice*, ¶ 36.

therefore urges the Commission to take this potential unintended adverse consequence into account in developing any enforcement procedures to address payment delinquencies by RespOrgs.

DISCUSSION

HyperCube appreciates the Commission's recognition that additional development of the record is necessary regarding enforcement mechanisms for non-payment by RespOrgs of regulatory fees applicable to TFNs. However, HyperCube is concerned that the mechanisms proposed in the *Further Notice* are disproportionate with respect to the violations they are intended to address, as well as likely to impose hardships on business customers of toll-free services and consumers who rely on toll-free numbers for important information. Moreover, the proposed mechanisms are likely to increase, rather than recoup, agency costs, the antithesis of the purpose of the regulatory fee system.

The TFN regulatory fees at issue will likely be minimal. SMS/800, Inc. ("SMS/800") estimates that if the proposed one-cent per month TFN regulatory fee is adopted, the majority of the over 450 RespOrgs would fall under the revised \$500 *de minimis* standard adopted by the Commission, with only approximately 200 RespOrgs actually submitting regulatory fees.³

Despite the minimal revenue to be derived from TFN regulatory fees, the *Further Notice* proposes enforcement mechanisms to ensure these fees are paid that in themselves will result in significant costs that substantially outweigh any benefits that could be derived from the fees. The Commission would in effect be seeking regulatory fees to offset its expenses, but the fee

³ Ex Parte Notice filed by Joel Bernstein, Vice President, Regulatory and Public Policy, SMS/800, Inc. (filed Dec. 11, 2014) ("*SMS/800 Dec. 11 Ex Parte*"). See also *Report and Order*, ¶ 21.

mechanism would itself raise the expense recovery level above the amount likely to be received, resulting in the need for further fee increases, an exercise in inefficiency.

Further, in addition to being costly, the impact of the proposed enforcement mechanisms is likely to be felt much more by a RespOrg's business customers, and the customers' consumer end users, than by a RespOrg. The Commission proposes to reclaim or revoke a TFN if the RespOrg responsible for paying regulatory fees associated with that number fails to pay. HyperCube agrees with SMS/800 that this proposal to revoke TFNs has a strong potential to cause more harm than has been anticipated by the Commission.⁴ While this proposed mechanism is triggered by a *RespOrg's* failure to pay a regulatory fee, the penalty imposed falls on the innocent TFN *customer*. As SMS/800 notes, a customer that has its TFNs revoked (for no fault of its own) will likely experience a significant service interruption that could drastically harm the company and result in significant business losses for it. At the same time, the business's consumers, who have no connection at all to the RespOrg, will also be denied the benefit of a toll-free number service on which they have come to rely.

RespOrgs' customers make significant investments in reliance on maintaining their TFNs. For instance, a company's toll-free phone number appears in a variety of advertising contexts for which the company pays, whether they are print, television, radio, or Internet media. If a TFN is revoked – without any fault of the customer company – then this company will lose and must duplicate its advertising investment, as well as potentially lose the good will of its misdirected and frustrated customers. Loss of TFNs, including “vanity numbers” that are closely associated with the identity of a business, may also impose additional administrative and out-of-pocket costs for such not-insignificant expenses as new business cards, new letterhead stationery,

⁴ Comments of SMS/800, Inc., 3 (filed November 25, 2014) (“*SMS/800 Comments*”).

and perhaps even new signage. Thus, the Commission’s proposed enforcement mechanism would harm a RespOrg’s customers far more than the subject RespOrg itself. HyperCube therefore urges the Commission to refrain from selecting revocation of TFNs as the penalty for RespOrg regulatory fee payment delinquencies. The resulting adverse consequences for the public are too great to justify such a measure.

The second proposed enforcement mechanism similarly would likely lead to substantial unintended adverse consequences for the public. This proposed mechanism is to decertify, or to direct SMS/800 to decertify, a RespOrg for non-payment of TFN regulatory fees. In this case, while the TFN would not be automatically revoked if a RespOrg is decertified (either by the Commission or by SMS/800), there would still be substantial adverse effects on customers and consumers. As SMS/800 explained, a RespOrg is generally responsible for transitioning its customers to another RespOrg when it shuts down its management services. If the RespOrg is forced to leave the business because of a Commission ordered decertification, “an orderly transition may be less likely”⁵ as there may no longer be a clear way to identify or correspond with the RespOrg’s former customers in such a situation. Further, decertification of a RespOrg would inhibit or prevent resolution of network failures that affect the RespOrg’s former customers. Again, the proposed mechanism will impose adverse consequences on RespOrg customers that are unwarranted and harsh, particularly in light of the limited benefits of imposing regulatory fees on RespOrgs in the first place.

The impact of the proposed remedies is also disproportionate when viewed in the context of established RespOrg management practices. SMS/800 revokes a RespOrg’s access to the database only in “the most egregious cases,” and only after giving the violating RespOrg “every

⁵ *Id.* at 4.

chance to correct its deficiency.”⁶ A RespOrg’s failure to pay a very small regulatory fee surely cannot be considered such an “egregious case.” The Commission should re-evaluate its proposals in light of the procedures that SMS/800 has already established to resolve delinquent payment problems while minimizing adverse effects on customers.⁷

However, if the Commission nonetheless does decide to adopt its enforcement proposals, HyperCube agrees with SMS/800 that procedural modifications must be made “to avoid unfairness and potential disputes.”⁸ That is, the Commission must not allow customers of RespOrgs or end users that utilize toll free numbers to bear the burden of the disruption of service. In recognition that regulatory fees are a new requirement for RespOrgs, and because, RespOrgs “are not generally accustomed to being regulated or paying regulatory fees,”⁹ any adopted enforcement measures should be aimed at obtaining missing fees, rather than punishing RespOrgs (and hence, their customers).

Alternatives

Moreover, there are several alternative approaches available to the Commission that would both minimize the disruptive impact on the public and minimize the additional costs to the Commission of enforcing regulatory fee obligations with respect to RespOrgs. These approaches would nonetheless promote compliance with and facilitate enforcement of the regulatory fee system. These options include:

1. Imposing a mandatory 30-day period to allow a violating RespOrg to resolve any outstanding fees, with the Commission refraining from revoking TFNs or other TFN privileges until a RespOrg has exhausted

⁶ *Id.*

⁷ *See e.g., SMS/800 Dec. 11 Ex Parte.*

⁸ *SMS/800 Comments*, 4.

⁹ *Report and Order*, ¶ 28.

its right to judicial review.¹⁰ During this time, if it became clear that the RespOrg would not be fulfilling its obligation to pay its regulatory fees, there would be sufficient time to ensure an orderly transition for the customers of the violating RespOrg. Such an approach would promote fee collections while minimizing service disruptions and other unintended consequences for customers and consumers.

2. Making SMS/800 responsible for the entire lifecycle of collections, reporting, and management of regulatory fee compliance and delinquencies, with a specific charter to prevent inadvertent customer or end user adverse impacts.
3. Designating a pool of alternative RespOrgs that would act on behalf of any noncompliant or non-functional RespOrg for the management of customer issues and prevention of negative impacts to customers and end users.

CONCLUSION

For the foregoing reasons, HyperCube urges the Commission to refrain from adopting the TFN regulatory fee enforcement mechanisms as they are proposed in the *Further Notice*. These proposals would result in significant harm and loss to the customers of the RespOrgs and to the public. In the event that the Commission does determine that some enforcement measures are necessary, HyperCube urges the Commission to recognize the importance of ensuring that customers of RespOrgs are protected from unintended harm and therefore give serious consideration to adoption of alternative enforcement regimes that are efficacious but far less likely to have side effects that can harm the public.

¹⁰ See e.g., *SMS/800 Comments*, 5.

Respectfully Submitted,

HyperCube Telecom, LLC

/s/ Helen E. Disenhaus

Helen E. Disenhaus
Jessica DeSimone
Telecommunications Law Professionals
PLLC
1025 Connecticut Avenue, NW
Suite 1011
Washington, DC 20036
(202) 789-3120 tel
(202) 789-3112 fax

Its Attorneys

December 29, 2014¹¹

Robert W. McCausland
Vice President
HyperCube Telecom, LLC
3200 W. Pleasant Run Road
Suite 300
Lancaster, TX 75146
(469) 727-1510 tel

{00071860;v1}

¹¹ The original comment deadline of December 26, 2014 occurred on a Federal Holiday when the FCC was closed. In accordance with 47 C.F.R. §1.4(j), these reply comments are being filed on the next business day, December 29, 2014.