

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Waiver by	)	CC Docket No. 95-155
Somos, Inc.	)	
	)	
Toll Free Number Administration	)	

**COMMENTS OF INTELIGENT, INC.**

Inteligent, Inc. (“Inteligent”) submits these comments, pursuant to the Commission’s Public Notice,<sup>1</sup> in support of the Petition<sup>2</sup> filed by Somos, Inc. (“Somos”) seeking an expedited limited waiver of the Commission’s rules requiring a “first-come, first-served” allocation of toll free telephone numbers.<sup>3</sup>

**I. Introduction and Summary**

Subscribers seeking a toll free telephone number must select a Responsible Organization (“RespOrg”)<sup>4</sup> that will manage that end user’s toll free telephone number record in a central database managed by Somos (formerly known as SMS/800, Inc.).<sup>5</sup> This is the SMS/800

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<sup>1</sup> Public Notice, Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Waiver of Section 52.111 of the Commission’s Rules, WC Docket No. 95-155, DA 16-366 (rel. Apr. 6, 2016).

<sup>2</sup> Petition for Waiver by Somos, Inc., CC Docket No. 95-155 (filed Mar. 21, 2016 (“Petition”).

<sup>3</sup> 47 C.F.R. § 52.111 (requiring that “Toll free numbers ...be made available on a first-come, first-served basis.”).

<sup>4</sup> 47 C.F.R. § 52.101(b).

<sup>5</sup> See *Toll Free Service Access Codes*, Order, 28 FCC Rcd 16139 ¶ 1, n.1. (Wireline Comp. Bur. 2013) (“844 Order”).

database, a centralized system for the assignment of toll free numbers. All RespOrgs must use the SMS/800 to verify the availability of specific numbers, reserve them, and create and share records necessary to facilitate call processing.<sup>6</sup>

Toll Free numbers are assigned to RespOrgs on a “first-come first-served basis” from a common pool of numbers.<sup>7</sup> The Commission’s rules prohibit RespOrgs from warehousing toll free numbers.<sup>8</sup> There is a presumption of warehousing if the RespOrg “does not have an identified toll free subscriber agreeing to be billed for the service associated with each toll free number reserved”<sup>9</sup> from the SMS/800 database. Thus, the reservation of a number serves as certification that the RespOrg has an identified subscriber agreeing to be billed for the service associated with the number.<sup>10</sup> At any given time, however, each RespOrg can reserve up to 2000 numbers or 7.5% of its total quantity of working numbers, whichever is greater.<sup>11</sup>

Inteliquent is a RespOrg but only became one relatively recently. As a result, Inteliquent has no toll free numbers in the 800 area code. Inteliquent would like to be able to offer 800 numbers to its customers.

It is against this basic framework that Somos files its Petition. According to Somos, it recently disconnected a RespOrg for nonpayment and confiscated all of that RespOrgs toll free numbers, including 96,000 800 numbers. According to Somos, these numbers are the most

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<sup>6</sup> *In the Matter of Toll Free Access Codes Database Services Management, Inc. Petition for Declaratory Ruling*, 15 FCC Rcd 11939, 11940 ¶ 2 (2000) (“*DSMI Order*”).

<sup>7</sup> 47 C.F.R. § 52.111.

<sup>8</sup> Warehousing” is defined as a practice where the RespOrg directly or indirectly through an affiliate reserves toll free numbers from the SMS database “without having a toll free subscriber for whom those numbers are being reserved.” 47 C.F.R. § 52.105.

<sup>9</sup> *Id.* at § 52.105(a).

<sup>10</sup> *Id.* at § 52.105(d).

<sup>11</sup> *Id.* at § 52.109(a).

desirable, 800 toll free numbers are 100% subscribed and are immediately reserved on the rare occasions that they come available.<sup>12</sup>

According to Somos, the Commission last allocated a significant number of 800 numbers — approximately 23,000 numbers in 2008.<sup>13</sup> The allocation method involved the SMS/800 administrator releasing 800 numbers every 15 minutes until all the available numbers were reserved. Twenty-one different RespOrgs obtained 800 numbers, however more than 70% went to two entities.

Somos suggests that absent a waiver of the “first-come, first-served” rule “a small number of entities will be able to reserve the lion’s share of these numbers.”<sup>14</sup> To prevent this unfair allocation, Somos proposes to limit the allocation to 100 toll free numbers in the 800 area code per RespOrg per day, during a five day allocation period. Inteliquent agrees that a limited waiver of the rule is appropriate and the Bureau should grant the waiver. Allocating the newly available 800 numbers in the manner Somos proposes is the best way to ensure that all RespOrgs have a fair and reasonable chance to reserve numbers in the 800 area code.

## **II. Good Cause Exist to Grant Somos’ Petition for Waiver**

The Commission may plainly waive its own rules.<sup>15</sup> The Commission’s waiver rule provides that “any provision of the [Commission’s] rules may be waived by the Commission on its own motion or on petition if good cause ... is shown.” Somos urges the Commission to waive rule 52.111 requiring allocation of toll free numbers on a “first-come, first-served” basis and instead allow it to allocate its 96,000 recaptured 800 numbers on a more limited basis, consistent

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<sup>12</sup> Petition at 2.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.*

<sup>15</sup> 47 C.F.R. § 1.3.

with the manner in which the Commission has allocated toll free vanity numbers in newly-opened area codes such as the 844 and 855 codes. Good cause exists to grant the Petition.

In the *844 Order*, the Wireline Competition Bureau, acting pursuant to authority delegated by the Commission, authorized Somos to limit each RespOrg to no more than 100 numbers in the new code per day for 30 days.<sup>16</sup> The Bureau previously adopted this limited allocation method for distributing 855 vanity numbers when it opened that toll free area code.<sup>17</sup> In opening up the 844 and 855 codes for the first time, the Bureau found that this “allocation method w[ould] distribute [toll free] numbers more equitably and efficiently” than the first-come, first-served default allocation required in the rules.<sup>18</sup> A more limited allocation was justified due to concerns that “without an allocation method, larger RespOrgs with enhanced connectivity to the SMS database would be able to quickly reserve sought after ... numbers.”<sup>19</sup> The record of the 855 proceeding showed that certain large RespOrgs used a “Mechanized Generic Interface” that allowed processing of “larger batch order orders” giving them “an advantage over other RespOrgs.”<sup>20</sup>

In both the *844 Order* and the *855 Order*, the Bureau found that there was a high demand for toll free vanity numbers in new toll free codes and accordingly determined that gradually distributing these numbers would assist in fairly meeting demand for such numbers.<sup>21</sup> The Bureau determined that a more limited allocation was “necessary to help prevent” RespOrgs with

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<sup>16</sup> *844 Order*, 28 FCC Rcd at 16139 ¶ 1.

<sup>17</sup> *Id.* at 16140 ¶ 3 citing *Toll Free Service Access Codes*, Order, 25 FCC Rcd 13687 (Wireline Comp. Bur. 2010) (“*855 Order*”).

<sup>18</sup> *844 Order*, 28 FCC Rcd at 16140 ¶ 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, n.13.

<sup>21</sup> *Id.* at 16141 ¶ 3; *855 Order*, 25 FCC Rcd at 13688-89 ¶¶ 3-5.

enhanced connectivity from acquiring an unfair advantage in reserving toll free numbers.<sup>22</sup> The Bureau thus waived the first-come, first-served rule that gave “all RespOrgs, regardless of their size and connectivity to the SMS/800 database, an equal opportunity to obtain” new toll free numbers.<sup>23</sup>

Inteliquent agrees with Somos that the same analysis now applies to the anticipated availability of approximately 96,000 toll free numbers in the 800 area code.<sup>24</sup> Like vanity toll free numbers in a new toll free area code, these are highly desirable toll free numbers. It would be more than reasonable for the Bureau to conclude that given the scarcity of available numbers in the 800 area code, there will be significant demand for such numbers. And absent a waiver from the first-come, first-served rule, large RespOrgs with access to a Mechanized Generic Interface will be able to acquire the vast majority of available 800 numbers. As the Bureau determined in the *844 Order*, the allocation method proposed in Somos’ petition “will distribute numbers more equitably and efficiently.”<sup>25</sup> For that reason the petition should be granted.

The Bureau, acting on its delegated authority, has ample authority to grant the Petition. In both the 844 and 855 orders, the Bureau found that the “plain language of section 52.111 of the Commission’s rules authorizes the Commission to direct assignment of toll free numbers on a basis different than the usual first-come, first-served basis.”<sup>26</sup> These orders also relied on the

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<sup>22</sup> *855 Order*, 25 FCC Rcd at 13688 ¶ 3.

<sup>23</sup> *Id.*, at ¶ 4.

<sup>24</sup> Petition at 2.

<sup>25</sup> *844 Order*, 28 FCC Rcd at 16140 ¶ 3.

<sup>26</sup> *Id.* at 16142 ¶ 7; *855 Order*, 25 FCC Rcd at 13690 ¶ 6 citing 47 C.F.R. § 52.111 (Toll free numbers “shall be made available on a first-come, first-served basis *unless otherwise directed by the Commission.*” 47 C.F.R. § 52.111 (emphasis in Orders)).

Commission's "authority to waive any provision of its rules for good cause shown."<sup>27</sup>

### III. Conclusion

For the aforementioned reasons, the Bureau should grant Somos' Petition and allow Somos to allocate the approximately 96,000 newly available toll free numbers in the 800 area code according to the method as Somos proposed to limit the allocation to 100 toll free numbers in the 800 area code per RespOrg per day during a five day allocation period.

Respectfully submitted,

*/s/ Tamar E. Finn*

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Tamar E. Finn  
Joshua M. Bobeck  
MORGAN LEWIS & BOCKIUS, LLP  
2020 K St., NW  
Washington, DC 20006  
Tel. 202.373.6000  
Fax. 202.739.6001  
[Tamar.finn@morganlewis.com](mailto:Tamar.finn@morganlewis.com)  
[joshua.bobek@morganlewis.com](mailto:joshua.bobek@morganlewis.com)

*/s/ John Harrington*

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John Harrington  
SVP-Regulatory, Litigation & HR  
INTELIQUENT  
550 West Adams Street, Suite 900  
Chicago, IL 60661  
Tel: 312.380.4528  
[jharrington@inteliquent.com](mailto:jharrington@inteliquent.com)

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<sup>27</sup> 844 Order, 28 FCC Rcd at 16142 ¶ 7; 855 Order, 25 FCC Rcd at 13690 ¶ 6 citing 47 C.F.R. § 1.3 ("The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission. ... Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").