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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:)	
)	
Petitions for Declaratory Ruling file by)	
Beehive Telephone Company and)	NSD File No. L-99-88
Database Services Management, Inc.)	NSD File No. L-99-87
Number Conservation Measures)	
)	
Toll Free Access Codes)	CC Docket No. 95-155
)	

COMMENTS OF MCI WORLDCOM, INC.

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SUMMARY

The existing system of toll free administration was established before the enactment of the Telecommunications Act of 1996. That act requires the Commission to establish neutral administration for telecommunications numbering, and to ensure that the costs of numbering administration be recovered from all carriers on a competitively neutral basis. The Commission has as yet failed to bring toll free administration into compliance with these statutory mandates. MCI WorldCom recommends that the Commission act to provide for neutral administration and cost recovery for toll free numbers. Such action would likely moot most of the issues raised in these petitions.

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COMMENTS OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. (MCI WorldCom) hereby submits comments on the above-referenced matters, pursuant to the Commission's Public Notice DA 99-2400, released November 2, 1999.

On October 9, 1997, the Commission, in its own words, "resolved the issue of toll free database administration, and concluded that, as currently structured, the toll free database administration is inconsistent with section 251(e)(1) of the Communications Act, as amended."¹ In the more than two years since then, the Commission has taken no action to make toll free administration consistent with the Act. Following the *NANP Order III*, the Commission received

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Administration of the North American Numbering Plan, CC Docket No. 96-98, *First Order on Reconsideration* (released July 19, 1999); citing, Administration of the North American Numbering Plan and Toll Free Service Access Codes, CC Docket Nos. 92-237 and 95-155, *Third Report and Order and Third Report and Order* (released October 9, 1997) (*NANP Order III*) at ¶ 109.

a recommendation from the North American Numbering Council, as well as comments from interested parties on that recommendation. By this Public Notice, the Commission seeks additional comment on a somewhat narrow set of issues related to toll free administration, that are raised by a dispute between two parties. MCI WorldCom submits that if the Commission would act to bring toll free administration into compliance with the Act, this dispute would be mooted.²

I. Background

It is useful to review the current toll free administration structure before considering the specific questions about which the Commission has sought comment here. The existing system of toll free numbering and portability was created at a time when the Bell Operating Companies (“BOCs”) were sheltered by law from local exchange competition, and were responsible for the administration of telephone numbers generally. That system is a vestige of monopoly and has no place in the world of competition and neutral administration envisioned by Congress. Congress recognized the incongruity of a monopoly approach to numbering in a competitive world, and directed the Commission to “create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.”³ Congress further required that “[t]he cost of establishing telecommunications numbering

² See, Comments of MCI Telecommunications Corporation, *In the Matter of Toll Free Service Access Codes*, CC Docket No. 95-155, NSD File No. L-98-85 (submitted July 1, 1998) (MCI Comments), for a detailed discussion of what is needed to bring toll free administration into compliance with the Act.

³ 47 U.S.C § 251(e)(1).

arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”⁴ When it comes to toll free numbers, the Commission has yet to act on either of these directives.

Toll free service is an interexchange common carrier service in which a subscriber agrees in advance to pay for all calls made to it using a predesignated number (e.g., 800). Following the breakup of AT&T in 1984, the BOCs were required to provide equal access to their local exchange networks to all interexchange carriers (IXCs) that wished to offer long distance service, including toll free service. In order to identify the IXC associated with a particular toll free number, the BOCs (and other local exchange carriers) originally used an NXX screening methodology, which focused on the first six digits of each 10-digit toll free number. The originating LEC would determine the identity of the appropriate IXC from the three digits immediately following the 800 prefix. The LEC would then route the calls to the designated IXC for completion.

NXX screening had a significant drawback: it did not allow for toll free number portability. Once a subscriber selected a particular IXC as its toll free provider, that subscriber could not take its business to another IXC without losing its toll free number. Thus, a subscriber that had promoted a particular toll free number, would be effectively “locked-in” to its current IXC. Moreover, if a new subscriber wanted a particular toll free number that customers could associate with its business, the subscriber would have to obtain service from the IXC to which that number was assigned.

In order to eliminate these disadvantages of NXX screening, the Commission mandated

⁴ 47 U.S.C. § 251(e)(2).

implementation of a database system of toll free access. Under this system, the originating LEC reads the entire toll free number, and then queries a database to identify the IXC associated with that number. The system avoids the permanent assignment of particular numbers to particular IXCs, and thus makes toll free numbers portable.⁵

The database system consists of a coordinated network of databases and a signaling system to route toll free calls. The LEC's signaling network interacts with several regional databases, called Service Control Points (SCPs), which contain customer records and routing instructions for each toll free number. The database system includes the Service Management System (SMS), the central database which houses all of the customer records for toll free service, including the numbers and the currently designated IXC. The SMS is interconnected to the SCPs and periodically updates the data in the SCPs by downloading current customer records to each of the regional SCPs. Specified entities, called Responsible Organizations (RespOrgs), are permitted access to the SMS to make changes, including changes in designated IXCs. The SMS is owned by the BOCs and operated under tariff by the Service Management Team (SMT), which consists of representatives of each of the BOCs. The database is managed, under contract with the SMT, by Database Service Management, Inc. (DSMI). Significant aspects of the operation of the SMS are performed by Southwestern Bell Telephone Company.⁶

RespOrgs access the SMS under the terms established in the SMT's SMS/800 tariff. That tariff includes charges for Service Establishment, SMS Access, Customer Record Administration

⁵ *SMS Tariff Order*, 11 FCC Rcd at 15231 (¶ 6). *See Provision of Access for 800 Service*, 8 FCC Rcd 1483 (¶ 4) (1993).

⁶ For a full discussion of that role, *see* MCI Comments at 8-10.

(a monthly per-number charge), RespOrg Reports, Mechanized Generic Interface Testing, and Miscellaneous Functions. Thus, RespOrgs, including IXCs, obtain access under a BOC tariff to a toll free number database that is managed on behalf of the BOCs by a company that until recently was owned by the BOCs. The predictable consequences of this monopoly-established service are inflated costs, unaccountable administration, anticompetitive conduct, and, at the very least, a plain appearance of partiality in permitting the BOCs to continue to operate the toll free numbering system as a monopoly fiefdom.⁷ This state of affairs was made unlawful with the passage of the Telecommunications Act. Indeed, the Commission has already recognized that “as presently structured, toll free number database administration is inconsistent with section 251(e)(1) of the Communications Act.”⁸ MCI WorldCom would add that it is also inconsistent with § 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”

The Commission directed the North American Numbering Council (NANC) to examine the issue of toll free administration, and to recommend an entity that would be an appropriate administrator for the database.⁹ The NANC delegated review of this issue to the NANPA Working Group, a subcommittee that had initially developed criteria to assess the neutrality of the NANPA. DSMI provided the NANPA Working Group with a letter in which it claimed that it was neutral for three reasons: (1) because DSMI purportedly has no role in toll free number

⁷ For additional details, *see* MCI Comments at 3-5.

⁸ *NANP Order III* at ¶ 109.

⁹ *Id.*

administration; (2) because DSMI's owner, Bellcore (now known as Telcordia), is now a subsidiary of Science Applications International Corp. (SAIC), and as a percentage of SAIC's revenues, DSMI's annual revenue from any individual telecommunications service provider is less than five percent; and (3) because DSMI is not subject to the undue influence of any industry segment. As MCI WorldCom has shown, these justifications are overly narrow, misleading, and irrelevant to the real issue of whether DSMI, or any administrator of the current BOC-dominated system, can be neutral.¹⁰

Nonetheless, the NANPA Working Group reported to the NANC that DSMI was neutral. MCI dissented from this report, and both MCI and AT&T -- then the two largest toll free service providers and the carriers that provided the largest shares of the revenue gathered by the SMS/800 tariff -- concluded that the entire structure of toll free administration should be investigated, including the relationship between the SMT and its subcontractors, as well as the SMS/800 system architecture, performance, and cost.

At its March 1998 meeting, the NANC concluded, based on the NANPA Working Group's report, that DSMI was neutral. The NANC advised the Commission that DSMI should be continued as the administrator, based on the sale of Bellcore to SAIC. The NANC deferred consideration of the larger issues raised by MCI and AT&T until some indeterminate future date. As yet, the NANC has not returned to these issues.

¹⁰ See MCI Comments at 13-16.

II. All Toll Free Administration Functions Performed by the SMT, the BOCs, and DSMI are Subject to the Neutrality Requirements Of § 251(e) of the Telecommunications Act

There is no doubt that the existing system of toll free administration is wholly inconsistent with § 251(e) of the Telecommunications Act. The Commission has already recognized that number administration includes four broad functions: policy making, dispute resolution, database maintenance, and processing applications for numbers.¹¹ With respect to toll free numbers, these functions are all performed by the cumulative efforts and effects of the BOCs, the SMT, the SMS/800 tariff, and DSMI.¹² Indeed, the tariff establishes all conditions under which RespOrgs can access the SMS. In effect, the BOCs have determined the terms and conditions by which all toll free numbers are assigned and administered. Indeed, one reason that the Commission originally required the BOCs to file the SMS/800 tariff, was because “the BOCs control all fundamental aspects of SMS access.”¹³ Conversely, the “administrator is merely a subcontractor with ministerial caretaking responsibilities performed on behalf of the BOCs.”¹⁴

Section 251(e) of the Telecommunications Act requires the Commission to replace the existing BOC-owned-and-operated system of toll free number administration and portability, with a system that is provided by a neutral third party. In the context of ordinary telephone number portability, the Commission has established rules and guidelines for the provision of

¹¹ *Administration of the North American Numbering Plan*, Notice of Proposed Rulemaking, 9 FCC Rcd 2068 (1994) at ¶ 7.

¹² *See* MCI Comments at 14-16.

¹³ *Provision of Access for 800 Service*, 8 FCC Rcd 1423 (1993), ¶ 31.

¹⁴ *Id.*

neutral administration. There is no legal basis on which to distinguish the Commission's duties with respect to toll free numbers, from its duties regarding ordinary telephone numbers. A comparison of the toll free system to the system established for ordinary telephone numbers, makes it abundantly clear that the existing system of toll free number administration and portability fails to comply with what is required by § 251(e).

- Database Ownership: the SMS/800 database is owned by the BOCs, in particular SWBT; the number portability database (NPAC) is owned by Neustar (formerly Lockheed Martin CIS), which was selected as a neutral third party.
- Database Management: the SMS/800 database is managed by the SMT, which consists exclusively of BOC representatives; the regional LNP databases are managed by the Limited Liability Corporations, which consist of representatives of all segments of the industry.
- Database Administration: the SMS/800 database is administered on behalf of the SMT by DSMI; the LNP databases are administered by Neustar on behalf of the LLCs.
- Terms and Conditions of Database Access: the terms and conditions that govern access to the SMS/800 database are established in the SMS/800 tariff which is issued by the BOCs; the terms and conditions that govern access to the LNP databases are governed by a User Agreement that was established jointly by Neustar and the LLCs.
- Cost Recovery: SMS/800 costs are recovered from RespOrgs pursuant to the terms of the SMS/800 tariff; shared LNP costs are recovered from all carriers in a competitively neutral manner.

The Commission should not ignore these differences any longer. It must provide for neutral administration and cost recovery for toll free numbers.¹⁵

¹⁵ The Commission has a duty to implement § 251(e). Moreover, failure to establish neutral administration of toll free numbers will prevent any BOC from complying with the provisions of § 271 that govern BOC interLATA entry.

III. Issues Raised in these Petitions

According to the Commission's Public Notice, these petitions concern seven issues upon which comments are sought. MCI WorldCom here provides comments on several of those issues.

With respect to the current tariff arrangement for SMS/800 services, BOC dominance of the SMT and control over toll free administration require that this service be provided under tariff. Otherwise, the opportunity for the BOCs to discriminate in favor of their own operations would be too great. Nonetheless, it is true that the current tariffed offering violates the statutory requirement that the costs of numbering administration be borne by all carriers on a competitively neutral basis. In fact, there has been no showing or finding that the existing tariff provides for competitively neutral cost recovery. MCI WorldCom believes that the tariffed charges are grossly in excess of the amount needed to pay for toll free administration. One consequence of this situation is that not only do the BOCs not contribute in a competitively neutral manner to the costs of toll free administration, they actually make a substantial profit from that administration. While these cost concerns are substantial, MCI WorldCom urges the Commission to continue the tariff arrangement, which offers the best protection from discrimination as long as toll free numbers are not administered on a neutral basis.

The Public Notice also seeks comment on whether DSMI is an impartial administrator. As the Commission has previously observed, "the administrator is merely a subcontractor with ministerial caretaking responsibilities performed on behalf of the BOCs."¹⁶ Accordingly, whether or not DSMI is impartial is a relatively minor part of any inquiry into impartiality of toll

¹⁶ *Provision of Access for 800 Service*, 8 FCC Rcd 1423 (1993), ¶ 31.

free numbering administration. However, since DSMI performs all duties under contract with the BOCs and the SMT, it is effectively their agent. As such, DSMI's impartiality is open to question. MCI WorldCom is not confident that DSMI can be expected to maintain impartiality given its dependence on the BOCs. Upon BOC interLATA entry pursuant to section 271, there will be a substantial risk that partiality in toll free administration will harm the vibrant competition that exists in this market.

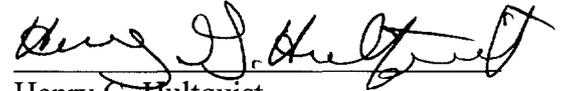
A critical issue that the Commission has not yet addressed concerns the manner in which the costs of SMS/800 services are recovered. As demonstrated above, existing cost recovery for toll free administration is borne by RespOrgs, that may or may not be telecommunications carriers. Moreover, it is likely that the charges for toll free administration under the SMT tariff allow for cost recovery substantially in excess of the costs of toll free administration. Thus, the costs of toll free administration and portability are not borne by all carriers on a competitively neutral basis.

The Public Notice also seeks comment on whether DSMI may administer the SMS/800 system under tariff, even though it is not a common carrier. In fact, DSMI administers the SMS/800 system not under tariff, but under contract with the BOCs. The terms and conditions of that contract are unknown to the rest of the industry. The SMS/800 tariff governs the terms and conditions under which the SMT, not DSMI, provides SMS/800 functions to RespOrgs. Since the SMT consists of common carriers, it is appropriate that this service be tariffed. However, as part of the transition to neutral administration, in the future the service should be provided under agreements between the neutral administrator and RespOrgs.

IV. Conclusion

As MCI WorldCom has repeatedly demonstrated, the existing system of toll free administration fails to comply with multiple provisions of the Telecommunications Act of 1996. The Commission should first act to bring toll free administration into compliance with the statute. MCI WorldCom recommends that the Commission initiate a rulemaking to provide for neutral administration for toll free numbers, as well as competitively neutral recovery of the costs of that administration. The Commission could then return to these petitions to determine whether or not any issues remain to be resolved.

Respectfully submitted,
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December 2, 1999

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Comments were sent via first class mail, postage paid, to the following on this 2nd day of December, 1999.

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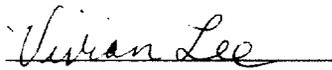
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