

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
)	
Database Services Management, Inc.)	NSD File No. L-99-87
Petition for Declaratory Ruling)	
)	
Beehive Telephone Company)	NSD File No. L-99-88
Petition for Declaratory Ruling)	
)	
Petitions for Reconsideration)	

REPLY TO OPPOSITIONS

WorldCom, Inc. ("WorldCom") submits this reply to the Oppositions to WorldCom's Petition for Reconsideration filed by DSMI and Verizon. The conclusory assertions made in those Oppositions provide no rationale for rejecting WorldCom's Petition. Based on this record, the Commission must reconsider its conclusion that DSMI is an impartial administrator of toll free numbers.

In our Petition, WorldCom argued that the Commission should reconsider its conclusion that DSMI is impartial for three reasons: (1) the Commission misapplied the neutrality criteria; (2) the Commission erroneously concluded that the SMS/800 Tariff ensures DSMI's impartiality; (3) the Commission failed to provide a sufficient rationale for reversing its prior determination that "as presently structured, toll free number

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database administration is inconsistent with section 251(e)(1) of the Communications Act.”¹ Neither DSMI nor Verizon has rebutted any of these arguments.

Section 251(e)(1) of the Communications Act requires, *inter alia*, that this Commission “create or designate one or more impartial entities to administer telecommunications numbering.” Designation of an impartial entity is an *ex ante* approach to ensuring fair dealing. That is, it helps to assure all parties in advance that they will receive fair treatment. In contrast, tariff enforcement is an *ex post* approach to discrimination. Tariff enforcement can mitigate the effects of discrimination only after the fact.

In this case, the Commission determined that despite the fact that DSMI receives a majority of its income from a single industry segment, it is not subject to the undue influence of that industry segment because it operates under a tariff that requires impartial administration.² As WorldCom showed in its Petition, this determination is contrary to the statutory requirement and at odds with the Commission’s own neutrality criteria. Parties opposing our Petition have offered no substantive argument to support their position. Indeed, neither DSMI nor Verizon even addresses this argument.

As a practical matter, the tariff cannot ensure DSMI’s impartiality. As shown in WorldCom’s Petition, DSMI undertakes numerous actions that are not strictly governed by the terms of the tariff.³ That is, DSMI exercises a great deal of discretion in its dealings with individual RespOrgs and the industry as a whole. DSMI barely addresses

¹ WorldCom Petition at 2-3.

² *Fifth Report and Order* (rel. July 5, 2000), ¶ 25.

³ WorldCom Petition at 6.

this argument, and says only that “[t]he system is fully automated, and DSMI itself has no direct access to the database, nor does it actually ‘administer’ any numbers.”⁴

Verizon appears to concede that DSMI may exercise discretion in performing its duties, but argues that DSMI’s track record shows that it is an impartial administrator.⁵ In so arguing, Verizon has completely missed the point. The Commission’s determination that DSMI is impartial was based on the misconception that the tariff prevents DSMI from exercising discretion.⁶ By acknowledging that DSMI may exercise discretion, Verizon has conceded that DSMI’s vulnerability to the influence of a particular industry segment matters. As a matter of law, this requires that the Commission designate a different entity to administer toll free numbers. It is irrelevant that no party has alleged specific instances of discrimination on the part of DSMI. The statute requires an impartial entity, not merely an entity subject to undue influence that has not been proven to discriminate in the past. Moreover, as WorldCom described in our Petition, it may be difficult to know whether DSMI favors the SMT members since its behavior is not transparent to all parties.⁷

Finally, neither DSMI nor Verizon acknowledges that the *Fifth Report and Order* accepts an argument that the Commission previously rejected – that the SMS/800 Tariff ensures DSMI’s impartiality – without explaining why the Commission has changed its mind. Instead, DSMI claims that many significant changes have occurred since 1993 in the structure of toll free administration.⁸ According to Verizon, “the latest order discusses the structure and operation of that system at length and explains its conclusion

⁴ DSMI’s Opposition at 4.

⁵ Verizon Opposition at 2.

⁶ *Fifth Report and Order*, ¶ 25.

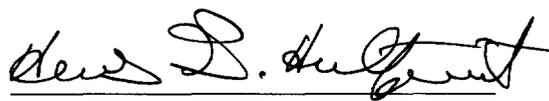
⁷ WorldCom Petition at 6.

that this system meets the statutory standard.”⁹ DSMI’s assertion may be true, but it is immaterial since the *Fifth Report and Order* does not base its conclusion on any changes that have occurred since 1993. Verizon is correct that the *Fifth Report and Order* discusses the operation of the system, but a similar discussion appeared in the earlier decision and no material fact has changed. The Commission must not only provide reasons for its conclusions, but it must also explain its departure from prior policy decisions. The Commission has not done so here.

As long as DSMI receives the majority of its revenues from the SMT members, it will remain subject to their undue influence. In these circumstances the Commission must conclude that DSMI is not impartial, and must move as quickly as possible to establish a lawful system of ownership, governance, and administration for toll free numbers.

Respectfully submitted,

WorldCom, Inc.



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August 24, 2000

⁸ DSMI’s Opposition at 2.

⁹ Verizon Opposition at 4.

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing In the Matter of Toll Free Services Management, Inc. Petition for Declaratory Ruling, Beehive Telephone Company Petition for Declaratory Ruling Petitions for Reconsideration, Reply to Oppositions of WorldCom, Inc. were sent via first class mail, postage paid, to the following on the 24th day of August 2000.

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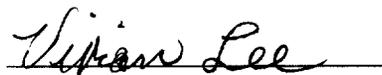
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