

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

NOV 9 2000

In the Matter of)
)
Toll Free Service Access Codes)

FEDERAL COMMUNICATIONS COMMISSION
CC Docket No. 95-155 OFFICE OF THE SECRETARY

Petition for Emergency Relief and Expedited Action

The Toll Free Number Coalition (the "Coalition"),¹ by its attorney and pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, hereby requests the Bureau to issue, no later than November 17, 2000, a declaratory ruling directing Database Service Management, Inc. ("DSMI") to defer its planned release of the 855 toll free service code, currently scheduled to occur on November 18, 2000, until such time as DSMI has demonstrated to the satisfaction of the Commission that this allocation will be administered in a fair, orderly and non-discriminatory manner, as required by the Commission and the SMS/800 tariff.² For the reasons set forth below, the Coalition respectfully submits that this emergency relief is warranted by DSMI's continued failure to rectify flaws in its administration of previous toll free service code releases which have prevented many small Responsible Organizations ("RespOrgs"), toll free number service providers and their customers from reserving numbers vital to their businesses. DSMI's continued refusal to acknowledge, much

A. _____

¹ The Toll Free Coalition is a coalition of small Responsible Organizations, toll free number service providers and their customers.

² The recent decision by DSMI not to defer the planned rollout of the 855 code pending a resolution of the issues raised in this Petition has necessitated the filing of the Petition at this late date. Hoping that DSMI would voluntarily address these concerns, the Coalition deferred seeking relief from the Commission until this time.

No. of Copies rec'd otk
List ABCDE

less address these abuses, undercuts the central tenets of the Commission's toll free number policies and should not be countenanced.

I. Background

The Commission has long recognized that toll free numbers "comprise a finite and very valuable public resource" which meets critical business functions and services the needs of thousands of consumers. *See, e.g., In the Matter of Toll Free Service Access Codes*, 10 FCC Rcd 13692 (1995). To ensure these benefits, pursuant to Section 251(e)(1) of the Act the Commission has adopted policies to require the allocation of toll free numbers among domestic users on a fair, equitable and orderly basis. *Toll Free Service Access Codes*, 13 FCC Rcd 9058 (1998) ("*Fourth Report and Order*"), ¶¶ 12, 13.

Central to the realization of these goals is the neutrality and efficiency of DSMI, the entity designated by the Commission to serve as the administrator of the toll free number database system. Pursuant to its authority under Section 251(e)(1) of the Act, the Commission has directed DSMI to assign toll free numbers on a first-come, first served basis, pursuant to tariff. *See* 47 C.F.R. § 52.111. DSMI is required to do so on an impartial basis, subject to strict neutrality criteria. *See Toll Free Access Codes*, FCC 00-237, released July 5, 2000 ("*Beehive Order*"); 47 C.F.R. § 52.12(a)(1).

The importance of DSMI's fair administration of the toll free number data base is heightened under the Commission's toll free number rules, which prohibit the brokering of toll free numbers by subscribers. 47 C.F.R. § 52.107(a). Pursuant

to these policies, subscribers whose RespOrgs are unable to reserve numbers critical to their businesses³ due to DSMI's negligence or willful misconduct are left without redress. The only effective way to protect such businesses from this harm – by permitting them to retrieve numbers in a marketplace environment – is unlawful.⁴

Notwithstanding this heavy burden, DSMI has failed to honor the Commission's mandates since their inception. In July 1998, the Commission received un rebutted reports that the distribution of 877 toll free numbers on April 5 of that year "was riddled with irregularities."⁵ By all reports, the opening the 877 Service Access Code ("SAC") was "confused and disorderly, with many RespOrgs 'locked out' of the SMS database for an extended period of time while one or more others reserved at least 10,000 numbers."⁶ "Existing toll free subscribers suffered irreparable harm as third parties, including potential competitors and speculators, seized 877 vanity numbers equivalent to their current 800 numbers and vital to their businesses."⁷

Seeking to avoid a recurrence of this fiasco, late last year a group of RespOrgs initiated contacts with DSMI to ascertain whether corrective measures had been taken to ensure the equitable allocation of numbers in the 866 and 855 SACs this

A. _____

³ Numerous toll free number subscribers have invested considerable resources to protect and market existing vanity numbers, and must now share equivalent numbers with other parties, leading to customer confusion and trademark litigation. See Supplemental Petition for Reconsideration of TLDP Communications, Inc., filed June 26, 1998 ("Supplemental Petition of TLDP"), Attachment A hereto.

⁴ For these and other reasons, Coalition members have petitioned the Commission to amend or repeal its number brokering rules. See, e.g., Supplemental Petition of TLDP. These requests have been pending before the Commission now for over two years.

⁵ Supplemental Petition of TLDP, p. 2.

year. To their surprise, not only were they unable to obtain any concrete assurances that this was the case, but some of the DSMI employees contacted denied that there had even been a problem with the 877 rollout at all. In addition, DSMI informed these RespOrgs that there were inherent differences between the Internet and MGI interfaces which would prevent RespOrgs accessing the database through the Internet from reserving numbers in the same manner as users of the MGI interface.

Concerned by these responses, on February 3 of this year members of the Coalition submitted a letter to Michael Wade, President of DSMI, requesting DSMI to provide detailed information on what, if any, corrective measures, it planned to implement for the 866 SAC release, scheduled for the spring, and whether these measures had been tested.⁸ In a February 15 letter, DSMI responded vaguely and only partially to this request, indicating that it had “taken the appropriate steps to help assure that the system is ready to handle the expected activity.” DSMI assured the Coalition that “any problems that may occur during the 866 code opening will be treated with the highest priority and resolved as quickly as possible,” adding that “[s]hould any systemic problems occur, we will, of course, work to eliminate them prior to the 855 opening.”⁹ In a subsequent letter, dated April 5, 2000, the Coalition

A

⁶ *Id.* at p. 4. See also attached letter of February 3, 2000 letter of Eric Fishman to Michael Wade, President of DSMI, Attachment B hereto.

⁷ *Id.* at pp. 2-3.

⁸ See attached letter of February 3, 2000 letter of Eric Fishman to Michael Wade, President of DSMI.

⁹ February 15, 2000 letter from Michael Wade to Eric Fishman, Attachment C hereto.

sought further clarification on certain of the representations made by DSMI, but has received no response to date.¹⁰

Ultimately, DSMI's broad assurances proved meaningless. In July of this year, during the allocation of the 866 SAC, RespOrgs encountered the very same problems which had plagued the 877 number release, despite elaborate and costly preparations they had undertaken in reliance on DSMI's promises. As the attached declaration of one of the Coalition's RespOrg members reflects, just minutes prior to the scheduled release of the 866 code, many RespOrgs were inexplicably disconnected by the SMS 800 GUI interface. Although these companies were able to reconnect some of their equipment shortly after the release commenced, within minutes the system froze, and no further requests could be processed. This lockout continued for more than 25-30 minutes. During this period, larger RespOrgs such as AT&T and MCI WorldCom successfully reserved some of the numbers smaller RespOrgs had wished to reserve. In response to RespOrg inquiries during the freeze, DSMI indicated it did not know when the problem would be resolved or which RespOrgs were or were not able to reserve 866 toll free numbers. Nor was DSMI able to offer user support or guidance.¹¹

II. Emergency Request for Stay

It is against this background that the Coalition urges the Commission to stay the scheduled allocation of the 855 toll free code until such time as DSMI is able to

A. _____

¹⁰ April 5, 2000 letter of Eric Fishman to Michael Wade, Attachment D hereto.

¹¹ See attached declaration of Sandra S. Murray, President of The Long Distance Partnership, L.P.

demonstrate, to the Commission's satisfaction, and with opportunity for public comment, that it will implement adequate corrective measures to prevent a recurrence of the problems which plagued both the 877 and 866 SAC rollouts.

Such action, the Coalition respectfully submits, is warranted by DSMI's continued failure to acknowledge, much less address, these ongoing deficiencies. As the attached declaration by one of the Coalition's RespOrg members reflects, as recently as one month ago DSMI failed to give RespOrgs adequate notification of and instructions for a preparatory "stress test" in anticipation of the 855 rollout conducted in September. While the Coalition's member encountered no delays for a 20 minute period once it was successfully configured, DSMI refused to inform participant RespOrgs whether it had duplicated the congestion factors which characterized the 866 rollout a few months earlier, or, for that matter, how many users, and how many of which access groups, had participated in that earlier allocation. Absent this critical information, the results of DSMI's "stress test" are dubious at best and only serve to underscore DSMI's unwillingness to address meaningfully the deficiencies of its past performance.

Nor would a delay in the allocation of the 855 code harm the public interest by accelerating an exhaustion of available toll free numbers. According to DSMI's own records, as of three weeks ago, over 8.1 million spare numbers remained in the SMS/800 database, with an average growth per week for numbers in use of only 64,000. Based on these figures, by DSMI's own estimate, toll free number

exhaustion will not occur for 127.7 weeks, until March 5, 2003.¹² Clearly, there is no critical need for DSMI to proceed with its 855 SAC roll out on November 18, as currently scheduled.

By contrast, a limited delay in the allocation of new toll free number codes until such time as DSMI demonstrates its willingness and ability to correct its past performance can only promote the public interest by ensuring a fair, equitable and orderly process, as the Act, the Commission's rules, and the SMS/800 tariff all require. DSMI's steadfast refusal to acknowledge, much less address the numerous flaws which have beset its prior toll free number allocations, and which numerous parties have reported, contravenes these mandates by depriving small RespOrgs and toll free number subscribers of the ability to compete for "a finite and very valuable public resource" and protect their substantial investments and business interests. To ensure the fulfillment of its statutory charge and these vital public interest goals, the Commission must intervene and act now.

The Coalition accordingly urges the Commission to issue an order, no later than November 17, 2000, direct DSMI to defer its planned release of the 855 toll free service code, currently scheduled to occur on November 18, 2000, until such time as DSMI has demonstrated to the satisfaction of the Commission that it has adequately rectified the problems which marred its previous rollouts, and that this new allocation will be administered in a fair, orderly and non-discriminatory manner. To ensure the fairness of this process, the Coalition further urges the

A. _____

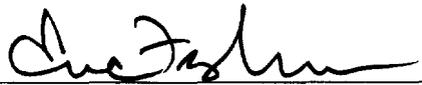
¹² See SMS/800 Bulletin Number SMS-00-207, September 25, 2000, Attachment E hereto.

Commission to provide all interested parties a reasonable opportunity to comment on DSMI's proposed remedies.

WHEREFORE, the Toll Free Number Coalition respectfully urges the Commission to grant the emergency relief requested herein.

Respectfully submitted

THE TOLL FREE NUMBER COALITION

By: 
Eric Fishman, Esq.
Holland & Knight, LLP
2100 Pennsylvania Avenue, NW
4th Floor
Washington, DC 20037
Phone: (202) 828-1849
FAX: (202) 828-1868
email: efishman@hklaw.com

November 9, 2000

DECLARATION OF
SANDRA S. MURRAY

1. I am Sandra S. Murray, President of TLDP Communications, Inc., General Partner of The Long Distance Partnership, L.P., in Burlington, Vermont. The Long Distance Partnership is an affiliate of the TLDP Communications, Inc.
2. The Long Distance Partnership is a RespOrg (ID No. LPS01). The Partnership is also a switchless reseller, providing 1+, toll free and calling card services to its customers. The Partnership markets its services through a variety of channels, including affinity marketing through non-profit institutions and shared use 800 services marketed by direct mail and business-to-business teleselling.
3. In its capacity as a RespOrg, The Long Distance Partnership has encountered substantial problems with the toll free number allocation process administered by Database Service Management Inc. ("DSMI") which have prevented us from reserving numbers on behalf of our customers as the FCC's rules require. These problems began with the rollout of the 877 Service Area Code ("SAC"), and are described in the attached July 25, 1998 Declaration of David Greenhaus, The Long Distance Partnership's former President. As Mr. Greenhaus's Declaration reflects, during that rollout an unexplained "freeze" of about one hour effectively blocked the number reservation efforts of numerous small RespOrgs, including The Long Distance Partnership, while 10,000 number reservations by larger competitors were honored.
4. To our great concern, the problems which plagued the 877 roll out in 1998 resurfaced this year with the allocation of the 866 code opening on July 29. In anticipation of that allocation, The Long Distance Partnership invested approximately \$10,000 to ready itself, including setting up a 56k dedicated line and programming scripts to automatically submit reservations via the SMS800 GUI Interface. Our system was thoroughly tested, and, based on tests that we had conducted in the weeks prior to the opening of the 866 NPA, we determined that we could reserve 10 numbers per machine from the database every 20 seconds. Under the supervision of our Senior Information Services Analyst, we had a crew of nine staff members in the office on Saturday, July 29th, to set up and monitor the process.
5. On July 29th, we had nine PCs-all connected to the SMS800 GUI Interface at least 1 ½ hours prior to the release. We were disconnected by SMS800 GUI 7-10 minutes before the release. We were able to reconnect eight of the nine machines and start the process by 1 minute after the release. Each of the eight machines were able to run the script for their first 10 numbers and then everything froze. We could not process any requests. We kept requesting numbers by our scripts and kept "timing-out", getting no response, within 2 minutes. This continued for more than 25-30 minutes.

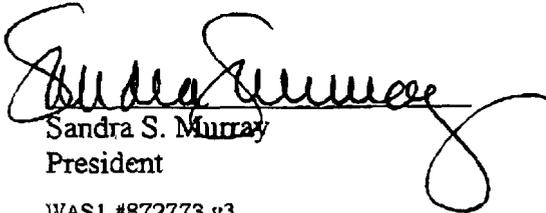
6. After roughly 25-30 minutes, we started to become reconnected and the process began to continue smoothly. All nine machines were running pretty smoothly and processed their requests within the next 15-20 minutes.
7. SNAC Monitoring Call. Throughout the release there was an open conference bridge maintained by SNAC for RespOrgs to share information, questions, and concerns relating to the code opening. Our group was monitoring the call, including a handful of other RespOrg representatives. We did hear several RespOrg Representatives say that they also were frozen or blocked out of the system at the beginning of the release and within 25-30 minutes they were back in and reserving.
8. During the "freeze out period", one of our senior staff members successfully connected to 3270 Dial Up connection and ascertained that MCI Worldcom reserved some of the numbers we had sought to reserve. It has since come to our knowledge that AT&T was able to continue to reserve numbers while the rest of us were locked out.
9. When we were initially disconnected prior to the release, and when we were frozen out of the system several minutes after the release, our Senior staff member contacted the SMS Group to inquire about the "freeze". Specifically, he wanted to know when the problem would be corrected and how many RespOrgs were experiencing the system failure. The SMS Group did not know when the problem would be resolved or which RespOrgs were or were not able to reserve 866 toll free numbers. SMS was not able to offer user support or guidance.
10. This is particularly disconcerting. Our organization experienced these same problems during the 877 release. We filed a petition with the FCC at that time (1998). The FCC has not responded. As a result we expressed our concern to SMS and the FCC prior to the 866 release. We were assured that the problems had been corrected; and yet we experienced the same inequity on July 29, 2000.
11. The Upcoming 855 SAC Release. As the scheduled allocation of the 855 SAC next month approaches, DSMI has provided to RespOrgs virtually no detailed information on how, if at all, it intends to correct the problems which have plagued its previous administration of toll free number rollouts.
12. On September 6, 2000, the Long Distance Partnership participated in an 855 Stress Test organized by DSMI on Wednesday, September 6, 2000 at 2:00 EDT, via the www.sms800gui.com connection. Our MIS staff, however, received insufficient notification and guidance regarding this stress test. Not only did we receive the necessary paperwork only 2 business days prior to the test but we also spent 4+ hours troubleshooting and conferencing with SMS staff to correctly configure the PC. We were not provided with appropriate directions or configurations to participate in this test environment. When we successfully configured the PC we spent the next hour and a half troubleshooting problems

that didn't exist. Apparently our logins and passwords were not in the Firewall in Dallas. Once they were added, the logins and passwords were removed from the SMS system and reentered. Apparently not all the passwords and logins were entered into all the databases. Finally, after about 3-4 more phone calls we were able to get into the test environment.

13. Once we finally accessed the test environment, we were able to participate in the Stress Test for a period of only 20 minutes. At no time during these 20 minutes did we encounter any delays, heavy traffic or other problems. This showed that the problem that was encountered during the 866 release on 7/29/00 and during the 877 release was **not** duplicated.
14. Given the constraints of the process set by DSMI, however, we do not believe that the above results are a reliable index of whether DSMI has directly addressed the past problems which plagued its previous rollouts, or whether the 855 rollout will proceed in a fair and orderly fashion. At no time during this "test" was there a conference discussing the traffic or test progress. Therefore, we could not confirm that there was an adequate number of GUI users to monitor the stress on this system.
15. Several days before the September 6, 2000 stress test, moreover, we voiced our concerns to a member of the SMS team that we did not believe that they would have enough GUI users to duplicate this "jam". When we asked how many RespOrgs were participating they could not tell us. They also could not verify how many users, and how many of which access groups, participated in the 866 Release on 7/29/00. Knowing the number of users and the types of users would have given them a better understanding of what was needed to make this a more productive and reasonable test.

I hereby declare, under penalty of perjury, that I have reviewed the attached Petition for Emergency Relief and Expedited Action of the Toll Free Number Coalition, and that the statements therein, and in this Declaration, are true and correct.

Executed: November 8, 2000



Sandra S. Murray
President

WAS1 #872773 v3

ATTACHMENT A

ANN BAVENDER*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN
ROBERT N. FELGAR*
ERIC FISHMAN
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING*
EUGENE M. LAWSON, JR.
HARRY C. MARTIN
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

FLETCHER, HEALD & HILDRETH
AND RETURN
THIS COPY TO
FLETCHER, HEALD & HILDRETH

FRANK W. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
MITCHELL LAZARUS*
EDWARD S. O'NEILL*
JOHN JOSEPH SMITH

WRITER'S DIRECT

RECEIVED AUG 26 1998

August 26, 1998

703-812-0483

fishman@fhh-telcomlaw.com

Delivery by Courier

Kathryn Brown, Chief
Common Carrier Bureau
1919 M Street, NW, Room 500
Washington, DC 20554

Re: TLDP Communications, Inc.
Supplemental Petition for Reconsideration
CC Docket No. 95-155 (Toll Free Service Access Codes)

Dear Ms. Brown:

The purpose of this letter is to ask the Common Carrier Bureau to issue a Public Notice requesting public comment on the above-captioned Supplemental Petition for Reconsideration ("Supplemental Petition") of TLDP Communications, Inc. ("TLDP"), filed June 26, 1998. A copy of this pleading is attached hereto.

In its Supplemental Petition, TLDP has requested leave to supplement its Petition for Reconsideration of the Commission's Second Report and Order in the above-captioned proceeding, filed May 27, 1997 ("Petition"), and has urged the Commission to eliminate or, in the alternative, modify its prohibition against the brokering of toll-free numbers in light of recent developments which warrant such action. Specifically, TLDP has brought to the Commission's attention the widespread irregularities and chaos occasioned by the opening of the 877 Service Access Code ("SAC") on April 5 of this year, pursuant to the Commission's Fourth Report and Order in this proceeding, In the Matter of Toll Free Service Access Codes, CC Docket No. 95-155, FCC 98-48, released March 31, 1998 ("Fourth Report and Order").

Kathryn Brown
August 26, 1998
Page 2

In recent discussions with the undersigned counsel, the staff has advised TLDP that it is inclined not to place TLDP's Supplemental Petition on Public Notice, but instead has tentatively decided either to accept and consider the Supplemental Petition as an informal pleading in the Second Report and Order reconsideration docket, or to reject the filing as untimely. It is TLDP's understanding that the staff has reached this tentative conclusion because pending Petitions for Reconsideration, filed in 1997, have sought the same relief requested by TLDP in its Supplemental Petition.

While TLDP does not dispute that previous Petitioners have also urged the Commission to modify, or eliminate, its prohibition against the brokering of toll-free numbers, TLDP respectfully submits that the placement of its Supplemental Petition on Public Notice would serve the public interest without unduly burdening the Commission's resources or delaying a resolution of the issues at hand. As TLDP has shown in its Supplemental Petition, the rollout of the 877 SAC had a severe, irreparable impact on existing toll-free number subscribers, who have invested considerable resources in their existing codes, and are unable to retrieve equivalent numbers they have lost absent a revocation of the Commission's anti-brokering rule. The experience of the 877 roll-out has not only raised serious questions regarding the efficacy of the Commission's ban on number brokering, but challenged the underlying assumptions on which that rule is based.

In 1997, when TLDP and other Petitioners sought reconsideration of the Second Report and Order, these developments could not have been anticipated. The placement on Public Notice of TLDP's Supplemental Petition will give interested parties an opportunity to comment on the merits of the toll-free numbering ban in light of these recent pertinent developments. Such an opportunity will also allow the Commission itself to base its decision on a more complete, up-to-date record. The Commission has allowed interested parties to "refresh the record" in this docket in similar circumstances,¹ and should do so again. Such an initiative, moreover, should not unduly burden the staff's resources or delay the final resolution of issues raised in this docket if the deadline for responsive comments is made short (e.g., 15 days).

¹ In a Public Notice of July 2, 1997, 62 Fed Reg. 364 (July 8, 1997), the Commission requested parties to refresh the record in this proceeding on issues associated with the treatment of vanity numbers, both with 888 as well as numbers in future toll free codes.

Kathryn Brown
August 26, 1998
Page 3

In light of the above, TLDP therefore urges the Commission to place its June 26, 1998 Supplemental Petition for Reconsideration on Public Notice as soon as possible, giving interest parties 15 days in which to submit responsive comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Fishman", with a long, sweeping horizontal stroke at the end.

Eric Fishman
Counsel to
TLDP Communications, Inc.

Attachment

**"PLEASE STAMP"
AND RETURN
THIS COPY TO
FLETCHER, HEALD & HILDRETH**

RECEIVED

JUN 26 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

**Supplemental Petition for Reconsideration
of TLDP Communications, Inc.**

TLDP COMMUNICATIONS, INC.

Eric Fishman
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

June 26, 1998

TABLE OF CONTENTS

	Page
Executive Summary	i
I. Background	1
II. The Release of the 877 SAC on a First-Come, First-Served Basis Has Irreparably Harmed Incumbent Toll-Free Subscribers	3
III. The Commission's Bar Against Number Brokering Should Be Repealed	5
A. The Anti-Brokering Rule Does Not Fulfill Its Purpose	6
B. Abolition of the Anti-Brokering Rule is in the Public Interest	8
IV. Conclusion	12

Executive Summary

The recent rollout of the 877 Service Area Code pursuant to the Commission's Fourth Report and Order in CC Docket 95-155, In the Matter of Toll Free Service Access Codes, FCC 98-48, released March 31, 1998, was riddled with irregularities, and many numbers were not assigned on a first-come, first-served basis as the Commission had mandated. The rollout also inflicted irreparable harm on existing toll free number subscribers as third parties, including potential competitors and speculators, seized 877 vanity numbers equivalent to their current 800 numbers and vital to their businesses. These incumbent subscribers, who have invested considerable resources in their existing codes, are virtually without recourse since the Commission's current prohibition against the brokering of toll-free numbers prevents them from retrieving numbers they have lost.

TLDP Communications, Inc. urges the Commission to rectify these problems by eliminating or, in the alternative, modifying its prohibition against the brokering of toll-free numbers. Abolition of the rule against brokering will not only enable incumbent subscribers to protect their investments, but will serve the public interest by reducing customer confusion and the incidence of expensive misdials, and by ensuring the availability of vanity toll-free numbers to small and new businesses currently locked out of the 800 market.

presumption from Section 52.107 of its rules and to declare that only the Commission has authority to render an enforceable ruling that hoarding has occurred. Alternatively, TLDP urged the Commission to (a) provide guidelines for service providers as to how it expects them to enforce the presumption, (b) expand the telemarketing exception set forth in ¶ 40 of the Second Report and Order to include other legitimate uses of toll free numbers, and (c) determine that it is the reseller, not the facilities-based carrier, which has the obligation to enforce the Commission's new rules in a resale scenario.²

At the time of its filing, TLDP refrained from challenging the Commission's anti-brokering rule because it shared the Commission's general belief that the brokering of toll-free numbers "provide[d] motivation for [unlawful] hoarding," contravened the public interest by causing a "quicker exhaustion" of Service Area Codes ("SACs"), and "interfere[d] with the orderly allocation of numbering resources." Second Report and Order, ¶ 38. The chaos occasioned by the recent opening of the 877 SAC pursuant to the Commission's Fourth Report and Order in this proceeding,³ however, has forced TLDP to reconsider the wisdom of those assumptions, and the bar on number brokering in general.

Contrary to the letter and spirit of the Commission's directive, the distribution of new toll-free numbers on April 5, 1998 was riddled with irregularities, and many numbers were not allocated on a first-come, first-served basis. Existing toll free subscribers suffered irreparable harm as third parties, including potential competitors and speculators, seized

² The instant pleading is meant to supplement and not replace the requests for relief in TLDP's original motion for reconsideration.

³ In the Matter of Toll Free Service Access Codes, CC Docket No. 95-155, FCC 98-48, released March 31, 1998 ("Fourth Report and Order").

877 vanity numbers equivalent to their current 800 numbers and vital to their businesses. Absent a revocation of the Commission's anti-brokering rule, these incumbent subscribers, who have invested considerable resources in their existing codes, will be unable to retrieve the numbers they have lost, and will suffer substantial, irreparable loss. Abolition of the rule against brokering will also serve the public interest in a number of ways, including reducing customer confusion and the incidence of expensive misdials, and ensuring the availability of vanity toll-free numbers to small and new businesses currently locked out of the 800 market.

II. The Release of the 877 SAC on a First-Come, First-Served Basis Has Irreparably Harmed Incumbent Toll-Free Subscribers

As the Commission itself has observed, since their introduction in 1967, toll free numbers have become a very popular and important business tool. In the Matter of Toll Free Access Codes, Fourth Report and Order and Memorandum Opinion and Order, FCC 98-48, released March 31, 1998 ("Fourth Report and Order"). Today "[t]hese numbers comprise a finite and very valuable public resource, one that satisfies an important business function and that is being used increasingly to meet consumers' personal needs." In the Matter of Toll Free Service Access Codes, Notice of Proposed Rulemaking, 10 FCC Rcd 13692 (1995) ("Notice of Proposed Rulemaking").

Until recently, Commission policies have struck a careful balance between protecting the legitimate interests of incumbent toll-free vanity number subscribers, while ensuring the fair, equitable and orderly allocation of toll-free numbers to newcomers. When, for example, the Commission opened the 888 SAC as 800 toll-free numbers were nearing depletion, it allowed 800 vanity number holders to arrange for equivalent 888

numbers to be set aside and protected from potential competitors. More recently, in its Fourth Report and Order, the Commission has established a right of first refusal with respect to such set aside numbers in recognition of the legitimate concerns of incumbents that problems of customer confusion, mis-dialing and new toll free subscribers benefitting from the marketing efforts of 800 subscribers with equivalent numbers were likely to have a serious impact on their businesses. Fourth Report and Order, ¶ 29.

In its Fourth Report and Order, however, the Commission has abruptly abandoned its policies, and abdicated its duty to ensure the fair, efficient and orderly administration of toll-numbers, by depriving incumbent toll-free vanity number subscribers of the ability to protect equivalent numbers in the 877 and future SACs in any meaningful fashion. Pursuant to the Commission's rules, incumbents must now compete for equivalent numbers on a first-come, first-served basis, with no assurance that they will acquire critical numbers, and no remedy if such numbers are lost.

As other parties have already observed, this dramatic policy shift has resulted in absolute chaos, and irreparable harm to incumbent toll-free vanity number subscribers whose equivalent numbers have been reserved by others.⁴ By all reports, the opening of the 877 SAC on April 5 pursuant to the Fourth Report and Order was confused and disorderly, with many RespOrgs "locked out" of the SMS database for an extended period of time while one or more others reserved at least 10,000 numbers. See attached affidavit

⁴ See Joint Petition for Reconsideration of The Direct Marketing Association and American Car Rental Association, filed May 4, 1998; Petition for Partial Reconsideration of MCI Telecommunications Corporation, filed May 4, 1998; and Petition for Reconsideration of the Fourth Report and Order for Toll Free Service Access Codes from the Office of Advocacy, United States Small Business Administration, filed May 4, 1998.

of David Greenhaus. Numerous subscribers, who have invested considerable resources to protect and market existing vanity numbers, must now share equivalent numbers with other parties, including potential competitors and speculators, and face the unpleasant prospect of massive customer confusion and asset depreciation. The only way to rectify the damage caused to these customers is to permit them to retrieve numbers by repealing the anti-brokering rules.

III. The Commission's Bar Against Number Brokering Should Be Repealed

The initial outcome of the 877 SAC opening, coupled with the Commission's bar on the brokering of toll-free numbers, have left RespOrgs and incumbent vanity toll free users without any viable recourse for the loss of equivalent 877 numbers. In an unregulated marketplace, incumbent subscribers who failed to obtain numbers critical to their businesses should be able to negotiate the purchase of these numbers on an arms-length basis. The Commission's prohibition on toll-free number brokering, however, explicitly bars such an approach.

The Commission's "solutions" to this dilemma -- consumer education and trademark protection litigation -- are costly, time consuming, and ineffectual. While TLDP generally shares the concerns of parties who have petitioned for reconsideration of the Fourth Report and Order, these pleadings are likewise unavailing since they will not restore equivalent vanity toll-free numbers which subscribers have lost.⁵ In short, brokering is the only feasible

⁵ Specific proposals by petitioners seeking modification or clarification of the Fourth Report and Order are both ineffectual and self-serving. The Direct Marketing Association and American Car Rental Association, for example, propose regulatory solutions for marketplace problems by limiting retrieval of equivalent vanity or branded numbers to incumbents who have successfully established in a formal complaint proceeding that hoarding, warehousing, or attempting to broker a

means of redressing the harm which incumbent subscribers have suffered as a result of the Commission's decision not to permit pre-reservation of 877 numbers and the total failure on the part of the SMS contractor to open the 877 SAC in conformance with the Commission's "first-come, first-served" directive.

This harm cannot be minimized. As Commissioner Furchtgott-Roth observed in his Dissenting Statement to the Fourth Report and Order, many subscribers to toll-free numbers have invested substantial resources in advertising to develop an association with particular products or services. The Commission's ruling "does not provide an adequate protection for those entities that have already invested heavily in the marketing of their toll free vanity numbers, and may discourage others from investing similarly in the future ... [T]hese adverse impacts on the market are only compounded by the Commission's anti-brokering rules ... Thus, the Commission's own regulations prohibit the free market from resolving these concerns."⁶

complementary toll-free number has occurred. Such a solution, however, will not benefit an incumbent whose complementary number has been acquired by an unscrupulous competitor or trademark infringer whose marketing campaigns are designed to confuse customers. More fundamentally, it seeks to regulate commercial activity which should be left to the free market. Equally disingenuous is the proposal by MCI Telecommunications for a special right of first refusal limited to the assignment of vanity toll-free access numbers "such as 1-877-COLLECT (which MCI was unable to obtain at the opening of the 877 toll-free code)." MCI Petition, p. 2. TLDP respectfully submits that it is the height of arrogance for MCI -- which opposed reservation of 877 codes -- to now seek preferential treatment for carriers such as itself (who bear much of the responsibility for the problem) only after its own valuable toll-free number has been lost. In essence, MCI is arguing that others should not be able to piggyback on MCI's investment in 800-COLLECT, but that it is OK for all of their customers, and every non-telecommunications company in the country, to lose out after opposing reservation. Such a proposal is patently self-serving and should be rejected by the Commission.

⁶ Certain publicly traded corporations have based their businesses on the continued availability of easily recognizable vanity toll free numbers. See, e.g., SEC

A. The Anti-Brokering Rule Does Not Fulfill Its Purpose

The historical record plainly illustrates that the Commission's current bar on toll-free number brokering does not fulfill its intended purpose, and that the benefits of repealing the rules outweigh the costs. As initially conceived, the bar against number brokering was designed to slow down the exhaustion of toll-free SACs, promote the orderly allocation of numbering resources, and deter unlawful hoarding. Second Report and Order, ¶ 38. As the rollout of the 877 SAC showed, however, there was no significant drain on the resource beyond an initial flurry of companies attempting either to replicate their existing 800 and 888 numbers or to obtain vanity numbers corresponding to those held by current 800 and 888 subscribers. As of April 18, 1998 -- two weeks after the 877 opening -- there were 352,157 877 numbers in use. This is a very similar number to the 374,000 numbers put into the set-aside pool for 888, and suggests that one can expect a similar number of replications with each subsequent code opening. This constitutes only 4.4% of the total available numbers in each code, and therefore represents a meaningless portion of the total resource. If this percentage is an accurate gauge of the volume of toll-free numbers having market value, the lifting of the prohibition on number brokering to allow incumbents to transfer control of numbers is unlikely to have a significant impact on the volume of numbers reserved. Moreover, while the abolition of the bar against brokering would allow for changes in vanity number subscribers, there is no evidence that such action will cause any acceleration in the depletion of the resource.

Nor is there any evidence that the Commission's bar on toll-free number brokering

has effectively prevented hoarding and warehousing. As defined by the Commission, hoarding and warehousing are activities readily distinguishable from brokering, and there is no rational basis for concluding that the brokering of numbers stimulates hoarding or warehousing. Presumably, carriers warehouse numbers to offer to their preferred customers, and not to resell. Likewise, the Commission can easily abolish its prohibition against brokering while leaving intact its bar against hoarding. As TLDP noted in its initial Petition for Reconsideration, the Commission has already carved out an exemption from its general bar against hoarding with respect to telemarketers who perform legitimate activities, and this limited exception can be expanded to include other applications without sacrificing the Commission's policy goals. The success of the anti-hoarding rules is not dependent on the anti-brokering restriction. See TLDP Petition for Reconsideration, filed May 27, 1997, pp. 3-6.

B. Abolition of the Anti-Brokering Rule is in the Public Interest

Abolition of the Commission's bar against toll-free number brokering would also advance many important public interest benefits, including but not limited to the following:

- Redress. As noted above, the purchase of equivalent 877 vanity numbers is the only effective means by which incumbent subscribers can redress the damage incurred by the recent 877 SAC rollout. Abolition of the bar against brokering would enable incumbent subscribers to protect their commercial investments and restore confidence in the Commission's toll-free regime.
- Trademark Litigation. As the Commission itself has recognized, the assignment of toll-free numbers on a first-come, first served basis is likely to trigger an explosion of trademark disputes. Fourth Report and Order, ¶ 27. Such litigation, which is both

time-consuming and expensive, running to several millions of dollars, is not a viable option for many businesses. The Commission can easily reduce such conflicts, and the substantial social and economic costs they entail, by allowing parties to purchase rights to use toll-free numbers at fair market value. The perpetuation of the anti-brokering rule does nothing more than transfer the Commission's responsibilities for fair and efficient number assignment to the courts, and will result in continued uncertainty and inefficient number usage.⁷

- Commission Resources. The perpetuation of the anti-brokering rule also burdens the Commission's scarce enforcement resources. Eliminating these restrictions will relieve the agency's staff from the burden of what could develop into a huge backlog of enforcement and complaint proceedings.
- Economic Benefits. There are extremely strong market forces which motivate businesses to try to replicate their valuable toll free numbers, and which drive businesses to locate and acquire the numbers they need -- whether directly through the SMS database, or through alternate channels. These activities are likely to continue regardless of any rules to the contrary, only because they represent reasonable, beneficial and efficient free market practices. There is no justification for regulations which prohibit economic activity which is so widely accepted, in order to prevent practices which occur infrequently and have an extremely negligible impact on the exhaustion of the resource. Rules against brokering, prohibiting the free transfer of toll free numbers between subscribers, are unnecessary, lead to

⁷ MCI Petition for Reconsideration, p. 6.

restrictions on a fair and competitive marketplace, and are not in the public interest.

- Resource Conservation. Brokering rules do nothing towards conserving the resource. In this connection, the Commission should be concerned primarily with the conservation of the resource, and should not seek to intervene in legitimate activities of users in the marketplace -- particularly those which involve the reallocation or nature of the use of resources which are already taken out of the available pool. The first-come, first-served regime adopted by the Commission in the Fourth Report and Order did not conserve a single toll-free number, but simply determined who acquired them, as the 877 rollout illustrated.
- Value of Numbers. It is axiomatic that certain vanity numbers are worth more to some subscribers than others, because of the nature of their respective businesses, and it is in the country's best interest to allow transfers of such numbers. For example, if a small mail order business has the number which spells 800-PLUMBER, but is not using the mnemonic, everyone loses if someone who wants to start a plumbing referral business cannot acquire the number. Similarly, if a meat-packing companies holds a number which happens to spell 1-800-SEINFELD, it is hard to conceive the public interest that is served in preventing the purchase of that number by someone who would like to use it to market a video film library.
- New Companies. New businesses are being founded all the time, and many will inevitably determine that they require a vanity 800 number. Today, however, there is almost no way of obtaining one, and it is impossible to obtain one that is easy to remember. As a practical matter, only businesses which were founded before 1998 are entitled to easy-to-remember numbers.

New and expanding companies are generally at a competitive disadvantage when it comes to obtaining a good vanity number. There is a clear perception that each succeeding code is less valuable than the last, yet the more valuable codes (800 and 888) are no longer available. Large carriers -- those with quickest access to the database as new codes are opened -- are not likely to give priority to small businesses trying to obtain good numbers. Recognizing the need to allow businesses to buy and sell their rights to toll free numbers would provide a much needed mechanism for new and growing businesses to obtain parity with their competitors.

- Reduction of Customer Confusion. Vast consumer confusion, mis-dial problems, trademark infringement, and unfair trade practices will continue to result from situations where different parties have similar toll free numbers. This issue existed when 800 was the sole toll free prefix, as companies had similar numbers (i.e., 800 FLOWERS vs. 800 4 FLOWERS). Anecdotal evidence suggests that businesses corrected the problems to a large extent by entering into arms-length agreements for the transfer of numbers. With new codes the problems will be much more severe and will increase greatly in occurrence (i.e., 800 FLOWERS vs. 877 FLOWERS vs. 866 FLOWERS, etc.).

With respect to misdials, new problems arise all the time. One of TLDP's customers recently had a problem when Texaco turned up a new number to its credit card center, and the customer was getting dozens of calls a week. It was clearly not in anyone's interest when Texaco customers were leaving messages on a residential answering machine reporting lost credit cards. It is only through the open market --

negotiated agreements between the parties involved -- that these problems are efficiently addressed.

- Contribution to Tax Base. Every time there is an acquisition of a toll-free number, the economy will benefit (the acquiring party seeks the number because it believes that the number is worth more than it is paying) and the country will benefit, because part of the consideration goes directly to the Treasury, in the form of income taxes. Perpetuation of the anti-brokering rule deprives the economy and the public of these tangible benefits.

The Commission's bar against the brokering of toll-free numbers is, finally, at direct odds with the Commission's general support of the operation of market place forces in other settings. In the wireless arena, for example, radio licenses are not only sold to the highest bidder, but the Commission has allowed licensees to partition service areas and disaggregate spectrum to unaffiliated third parties at negotiated rates. These initiatives, the Commission has recognized, serve the public interest by promoting more efficient spectrum use. The Commission's differential treatment of vanity numbers has no rational justification and should be abandoned.

IV. Conclusion

For the reasons set forth above, TLDP respectfully submits that the brokering of toll-free vanity numbers will stimulate economic activity and encourage the more efficient utilization of a scarce resource while in no way contributing to the rate of exhaustion of the resource. No one is required to buy or sell the rights to use toll-free numbers, but it is in the best interests of the country to give every one who wants the option of acquiring such rights to do so. The alternative is the current situation, where a black market will develop, and

parties may be tempted to circumvent the Commission's rules to meet marketplace realities. Such an outcome is not in anyone's interests, frustrates the public interest, and only rewards those who violate the Commission's rules. The abolition of the rule against brokering is the only effective way to rectify the damage which the 877 rollout has inflicted on incumbent subscribers and the general public, and should be adopted.

WHEREFORE, TLDP Communications, Inc. respectfully urges the Commission to grant the relief sought herein.

Respectfully submitted,

TLDP COMMUNICATIONS, INC.

By: 
Eric Fishman

Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

June 26, 1998

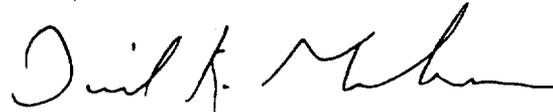
**DECLARATION OF
DAVID GREENHAUS**

1. I am David Greenhaus, Vice President of TLDP Communications, Inc., General Partner of The Long Distance Partnership, L.P., in Burlington, Vermont. The Long Distance Partnership is an affiliate of TLDP Communications, Inc.
2. The Long Distance Partnership is a RespOrg (ID No. LPS01). The Partnership is also a switchless reseller, providing 1+, toll free and calling card services to its customers. The Partnership markets its services through a variety of channels, including affinity marketing through non-profit institutions and shared use 800 services marketed by direct mail and business-to-business teleselling.
3. The Long Distance Partnership invested over \$25,000 to ready ourselves for the 877 code opening on April 5, 1998, including setting up a 56k dedicated line and programming scripts to automatically dial in and submit reservations to the database. Our system was thoroughly tested, and, based on tests that we had conducted in the weeks before the opening of the database, we determined that we could reserve numbers from the database at a rate of approximately two to three seconds per reservation. We had a crew of eight staff members in the office that Sunday, to set up and monitor the process.
4. We had 10 PCs – a combination of dial-up access and dedicated – which started on schedule and received a variety of initial responses – “number was available,” “number already reserved,” etc. Within seconds, everything froze. We received no further responses for the next 20 minutes. We took down some of the dedicated and dial-up sessions and restarted them. The system response was the same.
5. After roughly 20 minutes, we started to see some action, but very slow, 2-10 minutes between responses. Certain sessions were getting faster service – although there seemed to be no rhyme or reason. One dial-up session, on one of our slowest machines (486-66) had the most success.
6. After about 45 minutes, things started moving at a more reasonable rate, although it was more than 2 hours before we ran through the list of numbers requested by our customers and cleared all connections – as opposed to the 5-10 minutes that we had projected based on the tests conducted in the preceding weeks.
7. SNAC Monitoring Call. Throughout most of the day there was an open conference bridge maintained by SNAC for RespOrgs to share information, questions and concerns related to the code opening. I was monitoring that call along with many

other RespOrg representatives – including representatives of the largest RespOrgs. Based on the information received in the contemporaneous conference call, during the first hour, most RespOrgs seemed to be in the same boat as we were – experiencing severe delays and unresponsive screens, waiting for confirmations that weren't coming, etc. Frustrations seemed to be running quite high (even among MGI users). During the lockout, however, a representative from DSMI came on the conference bridge and mentioned that 10,000 numbers were reserved. This, at the same time many RespOrgs were reporting that they were "hung up" and unable to reserve numbers.

I hereby declare, under penalty of perjury, that I have reviewed the attached Petition for Reconsideration of TLDP Communications, Inc., and that the statements therein, and in this Declaration, are true and correct.

Executed: June 25, 1998

A handwritten signature in cursive script, appearing to read "David F. Mahan".

CERTIFICATE OF SERVICE

I, Eric Fishman, do hereby certify on this 26th day of June, 1998, that a copy of the foregoing Supplemental Petition for Reconsideration of TLDP Communications, Inc. in CC Docket No. 95-155, was served upon the parties listed below, via first class mail, postage pre-paid.

*Network Services Division (2 copies)
Common Carrier Bureau
Federal Communications Commission
2000 M Street, NW, Room 235
Washington, DC 20054

*ITS, Inc.
1231 20th Street, NW
Washington, DC 20054

Donna M. Roberts
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Leon M. Kestenbaum
Norina T. Moy
Sprint Communications Company, LP
1850 M Street, NW, Suite 1110
Washington, DC 20036

Colleen Boothby
D.E. Boehling
Levine, Blaszak, Block & Boothby, LLP
1300 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-1703

Andrew D. Lipman
Pamela S. Arluk
Swidler & Berlin, Chartered
3000 K Street, NW, Suite 300
Washington, DC 20007

Richard A. Karre
U S West Communications, Inc.
1020 19th Street, NW
Suite 700
Washington, DC 20036

Ian D. Volner
Heather L. McDowell
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, NW, Suite 1000
Washington, DC 20580

Gregory M. Scott
Collier, Shannon, Rill & Scott
3050 K Street, NW
Washington, DC 20007

Robert J. Keller
Law Offices of Robert J. Keller
4200 Wisconsin Avenue NW, #106-233
Washington, DC 20016-2143

Ralph White
New England 800 Company
251 Jefferson Street
Waldoboro, Maine 04572

Richard C. Bartel
CommVenture
5530 Wisconsin Avenue, Suite 703-705
Chevy Chase, Maryland 20815

Paul Palnick
Palnick Studios
P.O. Box 09342
Columbus, Ohio 43209

S. Jennell Trigg, Esq.
U.S. Small Business Administration
Office of Advocacy
409 Third Street, SW
Washington, DC 20416

Judith Oppenheimer, President
ICB Toll-Free Consultancy
160 East 26th Street, Suite 6E
New York, New York 10010

Honorable Patrick J. Leahy
United States Senate
433 Senate Russell Office Building
Washington, D.C. 20510-4502

*Courier delivery



Eric Fishman

ATTACHMENT B

Law Offices

HOLLAND & KNIGHT LLP

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202

202-955-3000
FAX 202-955-5564
www.hklaw.com

Atlanta	New York
Boca Raton	Northern Virginia
Boston	Orlando
Fort Lauderdale	Providence
Jacksonville	San Francisco
Lakeland	St. Petersburg
Melbourne	Tallahassee
Mexico City	Tampa
Miami	West Palm Beach

CHRON

February 3, 2000

ERIC FISHMAN
202-828-1849

Internet Address:
efishman@hklaw.com

EXPRESS MAIL AND
CERTIFIED MAIL/ RETURN RECEIPT REQUESTED

Mr. Michael Wade
President
Database Service Management, Inc.
3 Corporate Place
Piscataway, New Jersey 08854

Re: 866/855 Toll Free Service Access Codes Release

Dear Mr. Wade:

This letter is on behalf of a coalition of Responsible Organizations ("Resp Orgs") and toll free number service customers and providers (the "Coalition") who are concerned about the preparedness of Database Service Management, Inc. ("DSMI") to ensure an equitable and properly administered release of the 866 Service Code on April 1, 2000, and of the 855 Service Code on April 8, 2000, as presently scheduled.

On April 5, 1998, at approximately 1 p.m. (EST), just minutes after the 877 code was opened, Resp Org members of the Coalition were locked out of the SMS database for approximately 65 minutes. These Resp Orgs participated in the DSMI-sponsored real time conference call on that day, during which they learned that most, but not all, other Resp Orgs were experiencing the same situation. When the lockout situation ended, and they were able to process 877 requests for their customers, DSMI informed them that many of the numbers that they had asked to reserve had already been reserved by another carrier.

It is of utmost importance for Resp Orgs to obtain guarantees from DSMI that this situation will not be repeated during the upcoming releases of the 866 and 855 codes. Accordingly, late last year Resp Org members of the Coalition initiated contacts with DSMI to ascertain whether corrective measures had been

Mr. Michael Wade
February 3, 2000
Page 2

taken. To their surprise, not only were they unable to obtain any concrete assurances that this is the case, but some of the DSMI employees contacted denied that there had even been a problem with the 877 code release! In addition, these Resp Orgs were informed that there are inherent differences between the Internet and MGI interfaces, which will prevent Resp Orgs accessing the database through the Internet from reserving numbers in the same manner as users of the MGI interface.

We are therefore asking that you respond to the following questions within 10 days from the date of this letter:

1. Does DSMI acknowledge that irregularities occurred during the release of the 877 code, resulting in many Resp Orgs being locked out of the system for an extended period at 1 p.m. (EST) on April 5, 1998? If the answer is affirmative, please describe what measures, if any, were taken at that time to address complaints of Resp Orgs whose number requests were rejected, and what measures, if any, which have been taken to correct the situation for the upcoming release of the 866 and 855 codes.
2. What measures will be taken by DSMI to ensure that number requests submitted by Internet and dial-up users will be treated equally with requests submitted by MGI users?
3. Have any corrective measures been tested under heavy traffic conditions comparable to those experienced during the 877 release? If the answer is in the affirmative, please describe those tests in detail, including a description of tests of the dial-up interface, and test results.
4. Please explain why Internet and dial-up users, unlike MGI users, are not being given the option of submitting a file with all of their requests, but are being required to input requests by hand, with a maximum of 10 numbers at a time? Are there any other technical differences in the handling of reservation requests which will prevent Internet and dial-up users from having their requests processed as quickly as users of the MGI interface?
5. Has the Internet interface been fully tested under heavy traffic conditions? If the answer is affirmative, please describe any such tests in detail, and test results.
6. What provisions have been made to correct any problems that may occur in the 866 Service Code release prior to the 855 Service Code Release?

Mr. Michael Wade
February 3, 2000
Page 3

Due to the impending April 1 date, we require your responses within ten (10) days from the date of this letter. We would appreciate your response by facsimile to 202-828-1868, with a copy by overnight courier.

Sincerely yours,



Eric Fishman

WAS1 #795525 v1

ATTACHMENT C

February 15, 2000

Eric Fishman
Holland & Knight LLP
2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202

Mr. Fishman:

I have received your letter regarding the 866/855 Toll Free Service Access Codes Release. As you know, access to Toll Free number resources is available to Responsible Organizations (Resp Orgs) through the 800 Service Management System (SMS/800) Functions tariff, F.C.C. No. 1. The Regional Bell Operating Companies (RBOCs) jointly file that tariff and they are responsible for the provision of SMS/800 Services. Database Service Management, Inc. (DSMI) acts as the business manager for the RBOCs in providing SMS/800 services.

The SMS/800 Tariff provides for a variety of access methods to the SMS/800, based on the individual needs of the Resp Orgs. The system supports Mechanized Generic Interface (MGI) users, dedicated line access, dial-up access, and access via the World Wide Web using a Graphical User Interface (GUI). The capabilities of those alternate methods of access vary.

In April 1998, during the opening of the 877 code, we experienced two primary types of user impacting activities:

- 1) One MGI Resp Org experienced problems in processing, even though physical connections appeared to be correct. SMS/800 software support personnel worked with the MGI user to check their MGI system settings. After a reset of their system, the MGI system began processing. The diagnosis took approximately 20 minutes.
- 2) Some Online users pressed the "enter" key on their terminal too many times, and locked their screens. The users were instructed to correct

the situation by pressing the "pa-2" key on their terminal, which de-queues messages. The users' screens unlocked and they were able to resume processing.

During that initial code opening time period, we opened segregated queues to assure expedited processing of online transactions. Initially, the online and MGI requests were processed through a single queue. Due to the large number of MGI requests, online users' requests were processed slowly. The situation was modified within 15 minutes, and online user requests were not impacted by MGI activity.

It should be noted that there was no GUI access available during the 877 code opening.

During the rollout of the 866 and 855 codes, there will be separate queues for GUI, online, and MGI users. This will assure that transaction traffic from one user group does not negatively impact other user groups.

It should also be noted that no SMS/800 users, whatever their access method, submit a file containing their number reservation requests to SMS/800. All users send messages via the interface to which they subscribe. GUI users submit requests the same way as MGI users, with the ability to do a Number Search and Number Reserve in one step. Dial-up users need two steps to accomplish this. The difference in functionality is dictated by the inherent capabilities of the different interfaces.

Testing of the system prior to the opening of the 866 and 855 codes is being conducted under heavy traffic conditions to simulate actual code opening conditions. The Test Platform hardware has been upgraded since the 877 code opening, and the testing is being done with the same system configuration that will exist on the Production System during the actual code opening. The tests being executed are comprehensive, but we are unable to provide you with details, since that information is Proprietary. You should be aware, however, that accessing SMS/800 via the Internet could result in delays related to use of the Internet which is not under the control of SMS/800.

As with the 877 code opening, any problems that may occur during the 866 code opening will be treated with the highest priority and resolved as quickly as possible. We will have a large contingent of Subject Matter Experts (SMEs) on hand to ensure that we give the best possible support to our customers. Should any systemic problems occur, we will, of course, work to eliminate them prior to the 855 code opening.

I hope this answers your concerns. We recognize the importance of the coming code opening events and have taken the appropriate steps to help assure that the system is ready to handle the expected activity.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Wade". The signature is written in black ink and is positioned above the printed name.

Michael J. Wade
SMS/800 Services

Copy to: SMS/800 Management Team
Louise L. M. Tucker

ATTACHMENT D

Law Offices

HOLLAND & KNIGHT LLP

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202

202-955-3000
FAX 202-955-5564
www.hklaw.com

CHRON

Atlanta	Northern Virginia
Boston	Orlando
Bradenton	Providence
Chicago	San Francisco
Fort Lauderdale	St. Petersburg
Jacksonville	Tallahassee
Lakeland	Tampa
Melbourne	Washington, D.C.
Mexico City	West Palm Beach
Miami	Representative Offices:
New York	Buenos Aires
	Tel Aviv

ERIC FISHMAN
202-828-1849

Internet Address:
efishman@hklaw.com

April 4, 2000

VIA FEDERAL EXPRESS

Mr. Michael Wade
President
Database Service Management, Inc.
3 Corporate Place
Piscataway, New Jersey 08854

Re: 866/855 Toll Free Service Access Codes Release

Dear Mr. Wade:

Thank you for your letter of February 15, 2000 responding to my inquiry regarding the 866/855 service Access Code Release. Since receiving that letter, my clients have participated in industry tests, as well as the recent series of SNAC conference calls that resulted in a delay of the 866/855 code opening.

As a result, we have been able to focus our concern that the 866/855 release be conducted in a manner that allows customers to reserve numbers on a "first come, first served basis" into two categories:

First, we share the IMS Queue concern expressed in this excerpt from the OBF Moderator's recent (3/16/00) letter to the Chief of the FCC Network Services Division:

"The issue identified is as follows. The requests for numbers are time stamped upon entry into the Information Management System ("IMS") queue and then sent on to the processor region based on that time stamp. There are three separate processor regions for each of the interfaces, Mechanized Generic Interface ("MGI"), Graphical User Interface ("GUI") and On-line, and there is parallel processing in those regions. During the testing for 866/855, it was shown that in situations where one region is at a high volume and another is not, a

Mr. Michael Wade

April 4, 2000

Page 2

latter request in a given region could reach the reservation queue prior to a former request from another region regardless of the initial order into the IMS queue. Consequently, the concept of first-come, first-served could be jeopardized in those predefined circumstances."

Secondly, we are equally, if not more concerned about the Tariff and order non-compliance potential caused by the access discrepancies between the three user type interfaces (On-line, MGI, and GUI). Prior to the March 8th conference call, DSMI distributed a document entitled "Number Administration Processing" - a 3 page overview of the current reservation process. Page 2 of the handout (copy attached) outlines the differences and similarities between the three user interfaces. Anil Patel reviewed the differences during the call. Our concern is that both the FCC's Fourth Report and Order and Memorandum Opinion and Order in CC Docket 95-155, *Toll Free Service Access Codes*, FCC 98-48, released March 31, 1998 (Sec. 1, Para. 3) and Section 2.3.1 of the SMS/800 Tariff mandate that all customers are entitled to reserve numbers on a "first come, first served basis," but the interfaces are designed to treat some customers requests differently from others.

For example, the document confirms that the reservation process is a two step process for the on-line user, but a one step process for the GUI and MGI user. Or, to cite another example from the same outline, the on-line user can only request a search on one number at a time, but the MGI and GUI search and reserve 10 numbers at a time. And finally, line 4 under each interface confirms that the MGI User can program multiple requests ahead of time, the GUI user manually must enter search and reservation information, and the on-line user must manually enter search and reservation requests - one at a time.

The members of my client coalition represent more than one user interface type. However, they share the concern that because of these discrepancies, long before a request gets to the IMS Queue, the stage is set for customers not to receive first come, first served reservations. Clearly the pre-IMS Queue access advantage is given to the MGI user, the extraordinary RespOrg that can afford to pay 1/2 million dollars for access. Clearly, the majority of RespOrgs are GUI or on-line users. The on-line interface was just introduced this year. To comply with the mandate that all customers are to have "first come, first served access," these basic access discrepancies (outlined on page 2 of your reservation process overview) need to be addressed.

On behalf of my clients, I would ask that you respond to each of the concerns outlined above, and advise us of the contemplated schedule for making any changes that are required.

Mr. Michael Wade
April 4, 2000
Page 3

Again, thank you for your consideration and your ongoing efforts to make the reservation process fair and equitable.

Sincerely,

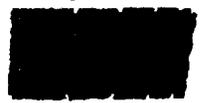


Eric Fishman

ef;egw

Enclosure

cc: L. Charles Keller, Chief
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington DC 20554



Reservation Process

- **On-Line User**

- 2 step process. Must first search and then submit reservation request.
- Can only request a search on 1 number at a time.
- Terminal is locked after each search or reservation request until response is received.
- Manually enters each search or reservation request.

- **MGI User**

- Search & reserved in a single request.
- Can specify search & reserve for 10 numbers in one request.
- Can submit multiple requests without waiting for response.
- Can program requests ahead of time.

- **GUI User**

- Search & reserved in a single request.
- Can specify search & reserve for 10 numbers in one request.
- Must wait for response before submitting next request.
- Manually enters search/reservation information.

ATTACHMENT E

CERTIFICATE OF SERVICE

I, Eric Fishman, do hereby certify on this 9th day of November, 2000, that a copy of the foregoing Petition for Emergency Relief and Expedited Action was served upon the parties listed below, by courier delivery:

Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

International Transcription Service
1231 20th Street, NW
Washington, DC 20036

Michael J. Wade*
Database Service Management, Inc.
3 Corporate Place
Piscataway, New Jersey 08854-4199



Eric Fishman

* Federal Express Delivery