

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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AT&T Request for)
Declaratory Ruling and Clarification)
Of Changes to the Toll-Free Number)
Administration System)

NSD File No. L-01-112
CC Docket 95-155

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF THE DIRECT MARKETING ASSOCIATION

The Direct Marketing Association ("The DMA"), pursuant to the Commission's Public Notice dated June 22, 2001, hereby respectfully submits its comments on the petition filed by AT&T Corporation ("AT&T") requesting a declaratory ruling and clarification concerning changes to the toll-free number administration system. The DMA wholeheartedly agrees with the concerns AT&T outlined in its petition, and urges the Commission to promptly grant the request.

In particular, The DMA shares deep concern about the Common Carrier Bureau's suggestion, reflected in its December 7, 2000 letter (the "*Keller-Wade Letter*") to Database Service Management, Inc. ("DSMI"), that all direct transfers of a toll-free number between subscribers violate the Commission's anti-brokering rules. That is not what the regulations provide and the Commission should clarify that its anti-brokering rules do *not* render unlawful all direct transfers of toll-free numbers between subscribers.

There are many instances when toll-free number subscribers may need to exchange one or more numbers that do not involve "brokering" a number as contemplated by the regulations. For example, there are instances when a toll-

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free number is mistakenly assigned to the wrong subscriber *after* an advertisement promoting (what should have been) the correct number has already been published. In such cases, the advertiser may want to acquire directly the advertised number from the subscriber to whom it was mistakenly assigned. A printing error could create the same problem. In either situation, both subscribers are best-served by a direct exchange and both suffer if the situation cannot be quickly resolved. The subscriber receiving misdirected calls will incur unnecessary costs – which can be substantial – as well as the burden of responding to those calls. At the same time, the “would-be” subscriber – whether it is a commercial firm, a public assistance organization, or a non-profit religious, charitable, or political entity – will risk loss of good will, lost marketing or outreach opportunities, or other harm to its relationship with callers.

There are also situations where a subscriber may wish to change the customer of record for a toll-free number to or from the subscriber and its agent in furtherance of a legitimate business purpose or other mission. For instance, an organization that wants to solicit charitable contributions or conduct political surveys might reserve a vanity number that helps identify the organization or its purpose. Yet, the organization may later determine that its business needs are better served by having an outside teleservices company that will handle its calls also serve as the customer of record for that number (*e.g.*, to facilitate automated or coordinated call routing, real-time interaction with computerized databases, consolidated billing, etc.).

The prohibition on toll-free number brokering also should not stand as a bar to smooth transitions – without loss of goodwill or return on investment in advertising – in the event of a transfer of control or sale of a company’s assets. Yet, the *Keller-Wade Letter* suggests that even a merger or acquisition could trigger a violation or the obligation to seek a waiver.

As a technical matter, these kinds of situations do not violate the Commission’s anti-brokering rules. The Commission’s rules expressly define brokering as being limited to “the *selling* of a toll-free number by a private entity *for a fee*.” 47 C.F.R. 52.107(a) (emphasis added). Thus, statements in the *Keller-Wade Letter* that suggest that the regulations prohibit *any* direct exchange between subscribers are simply incorrect.¹ The regulations only prohibit the sale of a number for a fee. Furthermore, not every form of compensation or consideration between subscribers involves selling a number for a fee. For instance, in the case of a printing error advertising the wrong toll-free number, the advertiser might agree to compensate the subscriber who received misdirected calls to help the latter’s costs (e.g., for handling an initial wave of misdirected calls, etc.). A corporate reorganization, acquisition, or name change also can – and in most cases will – involve an exchange of consideration between subscribers. Yet, one can hardly characterize a corporate acquisition that incidentally includes assuming control of a toll-free number as “selling” that

¹ The DMA also concurs with AT&T’s view that regulatory changes effected by the *Keller-Wade Letter* are procedurally flawed, too. Thus, if the Commission intends to expand its prohibition on brokering to cover exchanges that do not involve sales of numbers for a fee, then it must first adhere to the Administrative Procedure Act and its own rules, which require the Commission to first issue of a notice of proposed rulemaking and afford interested parties an opportunity to comment on the proposal.

number “for a fee.” Thus, the Commission must clarify that its rules do not prohibit all direct exchanges of toll-free numbers.

Moreover, the types of situations described above do not as a *practical* matter involve the kind of abuse the anti-brokering rule was intended to prevent. None of these situations involve attempts to “steal” a toll-free number or make any unauthorized change of a subscriber’s preferred carrier (“slamming”). Instead, arrangements to transfer or exchange toll-free numbers in the scenarios outlined above are based on the consent of each subscriber involved. Moreover, allowing subscribers to work out acceptable exchanges or transfers of the use of a particular number in these types of situations will not accelerate number exhaust; the Commission’s rules preventing warehousing and hoarding of toll-free numbers are not only sufficient but also more appropriate to address that concern.

The Bureau staff has suggested informally at a meeting with The DMA that a waiver procedure could accommodate these situations.² A “waiver,” however, should not be required for number transfers that do not violate the Commission’s rules in the first instance. In any event, a traditional waiver procedure is too cumbersome and time consuming to provide meaningful relief in time sensitive circumstances. And as AT&T notes in its petition, even an “expedited” waiver process would become unwieldy in the face of the sheer number of waiver requests necessitated by the rigid standards set out in the *Keller-Wade Letter*.

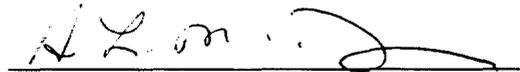
² See *Notice of Ex Parte Presentation* by The DMA (April 26, 2001).

The Commission must ensure that its regulations – and DSMI procedures that Responsible Organizations (“RespOrgs”) must follow – are flexible enough to enable RespOrgs and their toll-free customers to resolve errors or meet other legitimate customer service needs expeditiously. The *Keller-Wade Letter* incorrectly characterizes the Commission’s regulations and unreasonably restricts subscribers’ rights and remedies. Thus, the Commission should rescind the *Keller-Wade Letter* and clarify that the types of arrangements described above do not constitute “brokering.”

Respectfully submitted,

The Direct Marketing Association

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