



401 9th Street, NW, Suite 400
Washington, DC 20004

July 8, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 12th St., SW
Washington, D.C. 20554

Re: EX PARTE PRESENTATION
CC Docket No. 95-155

Dear Ms. Dortch:

Attached please find a copy of a letter from the Toll-Free LLC Working Group to the Chief of the Wireline Competition Bureau regarding the transfer of responsibility for managing the centralized toll-free database from the BOCs to a limited liability corporation. I request that this letter, which is being filed electronically, be placed in the file for the above-captioned proceeding.

Please contact me at (202) 585-1915 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Norina Moy". The signature is written in a cursive, flowing style.

Norina Moy
On behalf of the Toll-Free LLC Working Group

c: Bill Maher
John Rogovin
Narda Jones
Diane Griffin
Cheryl Callahan
Eric Einhorn
Jennifer Gorny

July 8, 2003

Mr. Bill Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: **Management of Centralized Toll-Free Database by an LLC
CC Docket No. 95-155**

Dear Mr. Maher:

On May 9, 2003, the Toll-Free LLC Working Group¹ met with you and members of your staff to discuss the possibility of transferring management and control of the centralized toll-free database (the SMS/800) from the BOCs to a limited liability corporation (LLC). At that meeting, you asked that we provide additional information on how the LLC might be organized and how the transfer would be effected, an update on outreach efforts to other interested parties, and a possible timeline for this project. We address each of these below.

1. LLC Organization

Section 251(e) of the Act specifies in part that “[t]he Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.” Consistent with this statutory imperative, the Commission has previously mandated administration of the North American Numbering Plan and the local number portability database by a neutral entity, emphasizing that the administrator “should be a non-governmental entity that is not aligned with any particular telecommunications industry segment,” and that is “fair and impartial.”² We believe that management of the centralized toll-free database by an LLC is consistent with Section 251(e) and satisfies the neutrality criteria previously established by the Commission. Because membership in the toll-free LLC will be open

¹ The Working Group is a coalition of Responsible Organizations (“Resp Orgs”) that includes the Bell Operating Companies that currently manage the centralized toll-free database (the telephone companies affiliated with BellSouth, Qwest, SBC, and Verizon) and the three largest Resp Orgs (AT&T, MCI, and Sprint). The LLC proposal has also been endorsed by Bell Canada, US LEC, ATL Communications, and Telus. Seven of the eight SCP owner/operators are represented in this coalition; because information from the centralized toll-free database is down-loaded to SCPs to ensure proper routing of toll-free traffic, it is as critical that a cooperative business relationship be established between the LLC and SCP owner/operators as between the LLC and toll-free service providers.

² *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588, 2613 (para. 57) (1995); *Telephone Number Portability*, 11 FCC Rcd 8352, 8400 (para. 92) (1996).

to all Resp Orgs, with no one company or industry segment dominating the group, the potential for bias would seem to be virtually non-existent.

Because of the success of the LLC currently in place to manage the local number portability (LNP) database, we anticipate modeling the toll-free LLC after the LNP LLC. To ensure neutrality in the management and administration of the LNP database, the LNP LLC Master Agreement specifies, among other things, that:

- All entities (including qualified trade and industry associations) that satisfy the eligibility requirements set forth in the master agreement may become members of the LLC;
- If two or more affiliated entities seek membership in the LLC, they must designate which shall be admitted as the member (*i.e.*, a corporation or other entity cannot gain multiple votes by seeking membership for multiple affiliates);
- All major business decisions require approval by at least 75% of the members;
- A vendor shall not be a member or an affiliate of a member of the LLC, absent waiver of this requirement by a supermajority of LLC members, excluding the member with the conflict of interest.³

The toll-free LLC would be open to any qualified entity that chooses to join, either as an individual or as part of a coalition (which presumably would share the membership fee and would have one vote). Although many governance issues have yet to be resolved, we expect that each member would have one vote. No decisions have yet been made regarding membership fees, nor has a comprehensive list of membership qualifications yet been developed. Assuming that the Commission responds favorably to the LLC concept, a meeting among interested parties and outside legal counsel will be scheduled expeditiously to work through these important implementation issues.

We expect that at least initially, the toll-free LLC would simply replace the BOCs as the collective entity to manage the centralized toll-free database, using the existing vendors (all of which have agreed to continue to provide the services they currently provide, at the same rates, terms and conditions as are in effect at the time of transfer from the BOCs to the LLC, for the unexpired period of their contracts). We further expect that as those vendor contracts expire, the LLC would develop and issue a request for proposal and select new vendors⁴ through a competitive bid process (a process that has worked

³To facilitate the transition from the BOC SMT to the LLC, existing vendor contracts will be assigned to the LLC and allowed to continue for the term of the contract. One of the current vendors is affiliated with a Resp Org; thus, if that Resp Org decides to participate in the LLC, a waiver of the “unaffiliated vendor” requirement would be needed for the duration of that pre-existing contract.

⁴ The winning vendor may be an existing vendor or an entirely new vendor, depending upon the price/service proposal each bidder submits.

exceedingly well in the LNP context). The goal of such a process would be to obtain the best possible service at the lowest possible price. We expect the costs of providing centralized toll-free database services will continue to be recovered from database users; there are no plans to attempt to recover any portion of these costs directly from toll-free service subscribers who are not Resp Orgs.⁵ Because the toll-free LLC would be a not-for-profit organization, there would be no return on investment mark-up included in the cost recovery mechanism.

We recognize that the FCC has “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States” (Section 251(e) of the Act), and fully expect that the toll-free LLC would be subject to oversight by the Commission. Consistent with its actions in other numbering dockets, the Commission may wish to delegate responsibility for immediate oversight of the toll-free LLC to the North American Numbering Council (NANC), the Federal Advisory Committee on numbering issues.

2. Federal Regulatory Filings

Section 214(a) of the Act requires carriers to obtain both entry certification (authorization to construct, acquire, operate, or engage in transmission over lines of communication) and exit certification (authorization to discontinue, reduce, or impair service to a community) from the Commission. We believe that a Section 214 application to discontinue service, filed jointly by the BOCs under Section 63.71 of the Rules, is the appropriate vehicle for effecting the transfer of responsibility for the centralized toll-free database from the BOCs to the toll-free LLC. Although the BOCs would be discontinuing their provision of the service, the new LLC would begin to provide such service as of the effective date of the BOCs’ discontinuation. There will be *no* discontinuance of centralized toll-free database service itself; one key imperative is to achieve a seamless transition with no interruption or degradation of service. Thus, the LLC’s service will be “a reasonable substitute” for the services provided today by the BOCs.

The BOCs’ Section 214 application would, of course, be placed on Public Notice, providing all interested parties with an opportunity to express their views. In addition to the outreach efforts already made (see point number 3 below), all affected customers (*i.e.*, all Resp Orgs) will be duly notified of the planned discontinuance/transfer of responsibility to the LLC as required under Section 63.71(a). If the Bureau grants streamlined treatment to this application, the application is considered granted on the 60th day after the date of the public notice that the application has been accepted for filing (Section 63.71(c)), unless the Bureau notifies the applicant to the contrary.⁶ Even if streamlined treatment is not granted, the Bureau is expected to act “no later than 180 days

⁵ The Commission has previously ruled that SMS/800 system administration costs should be borne only by the parties causing the costs. See *Toll Free Service Access Codes*, 15 FCC Rcd 11939, 11953 (para. 37) (2000) (*Fifth Report and Order*).

⁶ Simultaneous with the grant of the BOCs’ Section 214 application, the BOCs would withdraw their existing SMS/800 tariff.

from public notice,” except in “extraordinary circumstances” (Section 63.03(c)(2)). Because of the public record developed in response to the Public Notice (supplemented by the notice to affected customers), the Bureau can be assured in making such a decision that it has an adequate basis on which to adjudge the public convenience of the BOCs’ Section 214 application, and that administrative procedural requirements were satisfied.⁷

A Notice of Proposed Rulemaking is not necessary to effect the transfer of control of the centralized database to the toll-free LLC. The Commission’s decision to require the BOCs to provide centralized toll-free database pursuant to tariff was made in response to a petition for declaratory ruling filed by Comptel in 1992;⁸ this requirement is not codified in any FCC rule or regulation. More recently, the Commission asked the NANC for a recommendation “on how best to administer toll free numbers,” including whether “ownership and operation of the centralized toll free database system should be transferred to a non-government and/or non-carrier entity, and whether SMS/800 service should continue to be provided under tariff.”⁹ The Commission stated (*id.*) that “[u]pon receipt of the NANC’s recommendations and public comment, we will move expeditiously to determine whether it is in the public interest to restructure the ownership and operation of the current system of toll free number administration, and, if so, whether a new toll free number administrator should be selected.” Significantly, there was no hint in the *Fifth Report and Order* that the Commission believed that a rulemaking proceeding would be required; to the contrary, the language used suggests that the Commission planned to make a decision on restructuring based on the NANC’s recommendations and the public comment on those recommendations. The approach proposed here parallels the process laid out by the Commission in the *Fifth Report and Order*, except that the restructuring recommendation comes from an industry-wide pro-LLC coalition rather than from the NANC.

Although the Commission concluded that centralized toll-free database service was a Title II common carrier service,¹⁰ we do not believe that this service must be provided pursuant to tariff in an LLC environment. The peculiar circumstances that led the Commission to require tariffing of this service would no longer exist if management and control of the database were transferred to an LLC. Most importantly, this service would be managed by a neutral entity (an industry-wide LLC), thereby obviating the Commission’s concern about “possible discrimination in the provision of this monopoly service” (*id.*). Indeed, the Commission appears to have anticipated the eventual

⁷ The Chief of the Wireline Competition Bureau has delegated authority under Section 0.291 of the Rules to act on Section 214 applications that are not in hearing status.

⁸ *Provision of Access for 800 Service*, 8 FCC Rcd 1423 (1993) (“*Toll Free Order*”). The Commission’s original decision to require the BOCs to jointly provide database service was made in the initial rulemaking phase of this proceeding, in which the Commission was making policy determinations about the long-term system to be used to provide 800 access (database versus NXX 800 access) (see, *Provision of Access for 800 Service*, 4 FCC Rcd 2824 (1989)).

⁹ *Fifth Report and Order*, 15 FCC Rcd at 11950 (para. 28).

¹⁰ *Toll Free Order*, 8 FCC Rcd at 1426 (para. 29).

detariffing of centralized toll-free database service, when it stated that “the better course for now” would be to require provision of this service under tariff.¹¹

Instead of appearing in tariffs, the rates, terms and conditions governing use of the centralized toll-free database could be set forth in a user agreement to be signed by all Resp Orgs (similar to the arrangement for LNP). Because all users would be subject to the same agreement, and because this agreement would be subject to review by the Commission, the likelihood of discrimination is minimal.¹²

In its decision ordering the BOCs to jointly provide centralized toll-free database service under tariff, the Commission cited its authority contained in Sections 1, 3, 4, 201-205 and 208 of the Communications Act;¹³ it did not cite Section 214, and it did not grant Section 214 authority to the BOCs to provide this service. Thus, it may be argued that a petition for declaratory ruling would be a more appropriate vehicle for effecting the transfer of responsibility for the centralized toll-free database from the BOCs to the LLC.¹⁴ We are concerned, however, that a petition for declaratory ruling may be administratively less efficient than is the Section 214 approach, for at least two reasons. First, a petition for declaratory ruling may have to be acted on by the Commission rather than by the Bureau, and, given the press of other urgent matters requiring the attention of the Commissioners, it is unclear whether this item can be handled on an expedited basis. The Bureau has undisputed expertise in numbering issues, and, given the support for the LLC approach already enthusiastically expressed by the NANC, the SMS/800 Number Administration Committee (SNAC), and the instant diverse coalition, this matter seems best and most efficiently considered at the Bureau level.

Second, the filing of a petition for declaratory ruling does not involve specific notice to affected customers. Although we believe that outreach efforts to date have been effective, the notification requirement associated with a Section 214 application offers an additional, official assurance that all affected parties have been appropriately and individually advised of the proposed transfer of responsibility. Thus, the Section 214 approach would help to ensure that the Commission has a full record on which to base its decision.

The provision of centralized toll-free database service is a regulatory anomaly in many respects. Because there are no specific rules to govern the transfer of authority from the

¹¹ *Toll Free Order*, 8 FCC Rcd at 1426 (para. 29), emphasis added. At the end of this paragraph, the Commission stated that, “*At this time*, we believe that the service must be tariffed” to ensure that it is provided on a nondiscriminatory basis and at reasonable rates (emphasis added).

¹² We would note that many common carrier services, such as long distance services, are provided pursuant to contract rather than tariff.

¹³ *Toll Free Order*, 8 FCC Rcd at 1429 (para. 48); see also 4 FCC Rcd 2837 (para. 111) (citing Sections 4(i), 4(j), 201-205, 218, 220, 403 and 404).

¹⁴ As noted above, the Commission ordered the BOCs to jointly provide toll-free database service under tariff in response to a petition for declaratory ruling filed by Comptel.

BOCs to an LLC, the Commission should follow the most efficient path for achieving the neutral administration of this critical numbering resource.

3. Outreach

On May 13, 2003, a presentation was made to the NANC regarding the toll-free LLC proposal. No objections to the LLC concept were raised by any NANC member or by anyone in the audience, and the NANC has enthusiastically endorsed the concept (copy of letter dated May 29, 2003 from NANC Chairman Robert Atkinson to WCB Chief is attached).

On May 19, 2003, DSMI sent all Resp Orgs a "news flash" notification of the proposal to migrate management and control of the SMS/800 to an LLC (copy attached). A more detailed presentation regarding this proposal was made on June 16, 2003 to the SNAC, and a follow-up Q&A session on the proposal was held with SNAC members on June 17, 2003. On that date, the SNAC also officially endorsed the LLC approach (copy of SNAC letter is attached).

Finally, we have contacted the regulatory counsel for several groups representing large toll-free service subscribers as well as small Resp Orgs. These representatives were generally receptive to the proposal, and indicated that they would forward the information provided to their clients/member companies for further consideration. To date, none has expressed opposition to the LLC concept.

4. Timeline

Assuming that the Commission is comfortable with the concept of an LLC assuming control of the centralized toll-free database, we expect that such an LLC could be incorporated within a matter of weeks, using the LNP LLC template. Immediately after establishment of the LLC, the BOCs, as current providers of SMS/800 database services, would file a Section 214 application to transfer control of the database to the new toll-free LLC. If this application is promptly placed on Public Notice, the Bureau would be expected to evaluate the record and render its decision within 60 days (assuming automatic grant of the application), or by the first quarter of 2004 at the latest, even if the application is not given streamlined treatment.

Thank you for the opportunity to explain in further detail our thoughts regarding the transfer of responsibility of the centralized toll-free database from the BOCs to an industry-wide LLC. If you have any further questions, please feel free to contact us at (202) 585-1915.

Sincerely,



On behalf of the
Toll-Free LLC Working Group

c: John Rogovin
Narda Jones
Diane Griffin
Cheryl Callahan
Eric Einhorn
Jennifer Gorny

Attachments

North American Numbering Council
c/o Columbia Institute for Tele-Information
Columbia Business School
1A Uris Hall
3022 Broadway
New York, NY 10027-6902

May 29, 2003

Mr. William Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20544

RE: Toll Free Database Management

Dear Mr. Maher:

I understand that you and other members of the Commission staff (including Commissioner's assistants) received a briefing in early May from a coalition of telecommunications carriers concerning "Management & Ownership of the Centralized Toll Free Database by an LLC." A copy of the presentation is attached for reference.

The coalition's presentation was discussed at the May 13 meeting of the North American Numbering Council (NANC) since it deals with the administration of telephone numbers, a matter within NANC's charter. A change in how the databases for toll free services are managed seems to be necessary: the Regional Bell Operating Companies, which currently manage the databases, do not wish to continue to have this responsibility and other carriers have understandable competitive concerns with the *status quo*. The clear consensus opinion of NANC was fully supportive of the recommendation made in the coalition's presentation, e.g., that the FCC should authorize a Limited Liability Corporation (LLC) to assume the responsibility for contracting with third parties for the operation of the nation's toll free service databases.

NANC's support for the LLC approach is based on the demonstrated success of the North American Portability Management (NAPM) LLC that is responsible for contracting with third parties to manage the local number portability databases. The success of the LLC model is in stark contrast to the alternative model of having a government agency, such as the FCC, contract with the third party databases operators. NANC strongly supports the LLC model over the federal contracting model since the former is much more efficient, more responsive and less regulatory. It is important to note that the FCC could (and should) retain oversight authority over the LLC to ensure competitive neutrality and conformance with the Commission's policy goals.

NANC therefore urges the Commission to adopt rules as soon as possible that would allow the industry to establish an LLC to assume responsibility for the toll free databases.

As a matter of Chairman's privilege, I would like to personally endorse NANC's consensus: the proposed LLC arrangement is clearly superior to both the *status quo* and the federal contracting alternative.

Sincerely,

/Signed/

Robert C. Atkinson
NANC Chair

Attachment

cc: Matthew Brill, FCC
Sam Feder, FCC
Christopher Libertelli, FCC
Jessica Rosenworcel, FCC
Lisa Zaina, FCC
Diane Griffin, FCC
Eric Einhorn, FCC
Cheryl Callahan, FCC
Narda Jones, FCC
Sanford Williams, FCC

SMS/800

May 19, 2003

To: All Responsible Organization (Resp Org) Contacts

Re: SMS/800 Management Structure Changes

As you may recall, in March of last year, the Federal Communications Commission (FCC) sponsored a forum to discuss changes in the provision of toll-free number administration services. During the forum, the FCC announced their plans to issue a Notice of Proposed Rulemaking (NPRM) to define the future management structure associated with the centralized database system, currently known as the 800 Service Management System, or SMS/800. In addition, during the forum, the Bell Operating Companies (BOCs) announced their willingness to withdraw from their current role as the providers of toll-free number administration services via the SMS/800.

Since that forum, the members of the SMS/800 Management Team (SMT), acting as the representatives of the BOCs, have been working with several Responsible Organizations (Resp Orgs) to define the most appropriate future management structure.

On May 6 and May 9, representatives of AT&T, ATL, Bell Canada, BellSouth, MCI, Qwest, SBC, Sprint, US LEC, and Verizon met with representatives of the FCC to recommend that management of the SMS/800 be transferred to an industry Limited Liability Corporation (LLC). The representatives are united in their belief that the management structure that will best meet the needs of the users of the system, is a structure that is defined by the users themselves. Membership in the proposed LLC would be open to all Resp Orgs so that the needs and concerns of all users can be addressed and resolved.

On the next SMS/800 Number Administration Committee (SNAC) conference call, scheduled for June 16 – 19, the members of the SMT will facilitate a discussion of the proposed LLC and the issues surrounding its formation and the transfer of responsibility for SMS/800 services from the SMT / BOCs to the LLC.

Please take time to participate in this important conference call and make your views known. As we get closer to the call, SNAC will release logistic information regarding the call. In the interim, the ex parte notification that was filed with the FCC following the May 9 visit will be posted to the SMS/800 Website as a News Flash, immediately

following the distribution of this announcement. The ex parte file contains a copy of the charts used during the discussion with the Commission.

If you will not be able to participate in the SNAC call, or if you have questions or would like additional information, please feel free to contact either Anil Patel or Michael Wade at the SMS/800 Business Manager's office. All of the Resp Orgs working on the development of this proposal are eager to make sure that the final proposal not only provides for a high-quality cost-efficient system for handling toll-free number administration, but also that the proposed structure meets the needs of all of the user community. If you have questions, concerns, or suggestions, please contact us at 888-SMS-3300, Option 3.

On behalf of the SMS/800 Management Team,

Michael Wade
SMS/800 Business Manager



Alliance for Telecommunications
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June 23, 2003

Mr. William Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20544

RE: Toll Free System Database Management and Ownership

Dear Mr. Maher,

The ATIS/OBF SMS/800 Number Administration Committee (SNAC) addresses issues related to the Service Management System/800 (SMS/800) and toll free number administration. The SNAC is sending this letter in support of the industry activities surrounding a proposed new Limited Liability Corporation (LLC) formation as an alternative to the existing Regional Bell Operating Companies (RBOC) ownership and management of the Toll Free System nationwide database (SMS/800).

In advancing this goal, a coalition of Resp Orgs made presentations to the FCC and the North American Numbering Council (NANC). The SNAC supports the coalition's presentation and proposal (copy attached) and further recommends that the FCC endorse and authorize the model whereby a new LLC would assume all responsibilities associated with the centralized database that have been managed heretofore by the Service Management Team (comprised of the RBOCs).

This letter of support is offered based on the following particulars:

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- 1). The RBOCs do not wish to continue in the SMS/800 ownership and management role.
- 2). LLC models (such as Local Number Portability) have proven to be successful models that can better incorporate and support involved industry segments. All Resp Orgs will have an opportunity to participate in the planning, organization and management of the new LLC.
- 3). We believe that this model will benefit all industry segments over a governmental oversight model for reasons of efficiency and responsiveness.

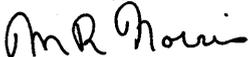
To supplement the letter of support rendered by the NANC Chairperson, Robert C. Atkinson (also attached), the SNAC also endorses the proposed LLC arrangement as a superior model to both the "status quo and the federal contracting alternative".

In conclusion, the SNAC also urges the Commission to adopt rules as soon as possible that would allow the industry to establish a new LLC to assume responsibility for the Toll Free database. The SNAC stands ready to provide the FCC any additional information or assistance to facilitate the process.

Should you have any questions regarding this matter, please contact the OBF SNAC Co-Leaders, Cynthia Benton, MCI, at (210) 484-2328 or via email: cynthia.benton@mci.com, or Jonnie Bond, AT&T, at (330) 769-3317 or via email: jonnie@att.com.

Thank you for your attention to this matter.

Sincerely,



Mike Norris
OBF Moderator

Attachments – 2

Cc: Chris Read, OBF Assistant Moderator
Robert C. Atkinson, NANC Chair
Michael O'Connor, Verizon, Director of Federal Regulatory Planning and Policy
Matthew Brill, CM-CK, FCC
Sam Feder, CM-CK, FCC
Christopher Libertelli, CM-CH, FCC
Jessica Rosenworcel, CM-MC, FCC
Lisa Zaina, CM-JA, FCC
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Sanford Williams, FCC
Eric Einhorn, Division Chief, TAPD, WCB
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Cheryl Callahan, Assistant Division Chief, TAPD, WCB
Jennifer Gorny, Advising Attorney, TAPD, WCB
Megan Campbell, ATIS General Counsel
John Pautlitz, ATIS Director – Industry Forums
Heike Martin, Forum Administrator
Cynthia Benton, SNAC Co-Leader
Jonnie Bond, SNAC Co-Leader
Deseree Herring, SNAC Administrator